U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FORREST E. BUTLER and U.S. POSTAL SERVICE,
POST OFFICE, Jackson, TN

Docket No. 99-1963; Submitted on the Record;
Issued October 4, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on June 6, 1998 as alleged.

On June 7, 1998 appellant, then a 66-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 1998 he sustained injuries to his right arm, left leg and back when his legs collapsed and he fell to the floor as he tried to sit down. Appellant alleged that he fell when he tried to sit down due to severe pain and numbness in both legs.

On the claim form, Stephen R. Cole, appellant's coworker, stated that appellant was sitting at the express mail desk when he asked me to get his supervisor. Mr. Cole also stated that, immediately after he called appellant's supervisor, appellant sank to his knees and to the floor. On the reverse side of the claim form, appellant's supervisor noted that appellant first received medical care on June 7, 1998 from "JMCGH." By checkmark, appellant's supervisor indicated that appellant was injured in the performance of duty, but that there was no information supporting an injury. Appellant stopped work on June 7, 1998.

To support his claim, appellant submitted treatment notes dated June 6 and 15, 1998 from Dr. Ronald Twilla, a Board-certified family practitioner and geriatric specialist. In his notes dated June 6, 1998, Dr. Twilla stated that appellant fell three times since returning to work on May 9, 1998 and that his lumbar pain "is [sometimes] so bad into his left leg that he can hardly stand it." He noted tenderness along the medial border of the right scapula. Dr. Twilla diagnosed chronic lumbar pain due to lumbar disc disease, right side neck pain, bilateral rotator cuff tears and right carpal tunnel syndrome. In his notes dated June 15, 1998, Dr. Twilla stated that appellant sought documentation regarding his medical conditions.

Appellant also submitted a form dated June 7, 1998 from Dr. Subayti Yahya stating that appellant's chief complaint was numbness in both legs. Additionally, appellant submitted

emergency department discharge instructions dated June 8, 1998 advising him to rest at home and continue his medication.

A June 18, 1998 report from Dr. Glenn Barnett, a Board-certified neurosurgeon, stated: "I do not have a solution to [appellant's] problems. I [cannot] help him. I am not going to keep him off from work." Dr. Barnett noted that appellant's chief complaint was low back pain with pain and numbness radiating to both legs that he experienced severe pain for three days prior to the June 6, 1998 employment incident and that appellant complained of tingling in his right elbow and forearm. Dr. Barnett diagnosed low backache and radiculopathy.

By letter dated July 2, 1998, the Office of Workers' Compensation Programs requested additional factual and medical evidence and allowed appellant 30 days to respond to its request.

In response, appellant submitted an attending physician's report (Form CA-20) dated July 6, 1998 from Dr. Sturla Canale, a Board-certified orthopedic surgeon. In her report, Dr. Canale noted appellant's medical history and diagnosed "status post lumbar disc surgery." By checkmark, she indicated that she believed appellant's condition was caused or aggravated by an employment activity, "per patient['s] history." Dr. Canale examined appellant on May 20, 1998 and told him then that he could resume light-duty work with restrictions.

By decision dated September 4, 1998, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to show that he sustained an injury in the performance of duty on June 6, 1998 as alleged. The Office found that appellant's description of the June 6, 1998 employment incident differed from the statement provided by appellant's coworker and that the medical evidence of record did not contain a clear diagnosis of his condition.

By letter dated September 15, 1998, appellant requested an oral hearing, which was held on February 23, 1999. At the hearing, appellant testified that on June 6, 1998 he was either in pain or was sick when he experienced pain and numbness and tried to sit down. He stated that before he was able to sit, his legs collapsed and he fell on the stool and then to the floor. Appellant also stated that he always walks with a cane and a camp stool in the event that he experience pain and numbness in his legs and must sit down immediately. Appellant testified that at the time of the June 6, 1998 employment incident he could not see Mr. Cole and he guessed that Mr. Cole could see him from the chest up.

Appellant submitted additional evidence subsequent to the February 23, 1999 hearing, including a note from Dr. Twilla dated June 10, 1998, stating that appellant was under his care and would return to work on June 19, 1998. In a July 28, 1998 report, Dr. Twilla discussed the June 6, 1998 employment incident and appellant's subsequent visit to the emergency room. Regarding appellant's June 8, 1998 examination, Dr. Twilla stated, "[Appellant] was having problems on the right side of his neck with possible aggravation of cervical disc and also had pain in his right scapula area. He was walking favoring his left leg with a cane held in his right hand."

Dr. Twilla also stated, "It is my opinion that the fall directly aggravated [appellant's] numerous other conditions including the failed lumbar disc surgery, the rotator cuff injuries of

both shoulders, the carpal tunnel syndrome in the right wrist and his cervical disc disease in his neck. These all seem to be compatible with the fall and with prior problems that [appellant] has experienced." Dr. Twilla noted that on June 8, 1998 he diagnosed chronic pain due to lumbar disc disease and right neck pain with questionable cervical disc, bilateral rotator cuff tears, right carpal tunnel syndrome.

Appellant further submitted progress notes dated July 29 and October 19, 1998 from Dr. Barnett who stated, "I really have nothing to offer [appellant]" and he presented because his case would be closed if he did not do so. In his notes dated October 19, 1998, Dr. Barnett stated that appellant showed him letters from various physicians regarding his conditions.

By decision dated April 22, 1999, the hearing examiner affirmed the Office's September 4, 1998 decision on the grounds that the evidence of record failed to establish fact of injury. The hearing representative found that appellant was not in the performance of duty at the time of the June 6, 1998 employment incident and that the medical evidence of record did not explain whether appellant's fall was caused by or related to his federal employment or previously accepted work-related injuries.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on June 6, 1998, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[2] Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her condition for which compensation is claimed is causally related to the injury.

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[4] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id.*

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to whether the specific event or incident occurred at the time, place and in the manner alleged, or whether the alleged injury was in the performance of duty.[6] Nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act. An injury does not have to be confirmed by witnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action.[7] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established his or her claim.[8]

In this case, the hearing examiner found that the medical evidence "fails to support [appellant's] theory" that he fell to the floor as he attempted to sit down when he experienced pain and numbness in his legs. However, the question of whether an alleged employment incident occurred at the time, place and in the manner alleged is not a medical question. Rather, an employee need only submit factual evidence showing that he or she actually experienced the alleged employment incident.

The evidence of record does not cast serious doubt on appellant's allegation that the June 6, 1998 employment incident occurred at the time, place and in the manner alleged. Mr. Cole's statement is not inconsistent with appellant's statement as both Mr. Cole and appellant stated on the claim form that appellant fell to the floor. The fact that appellant stated that the fall occurred when his "legs collapsed" and Mr. Cole stated that appellant "[sank] to his knees" is insignificant. Also, appellant's supervisor indicated on the reverse side of the claim form that appellant was injured in the performance of duty.

The second component of fact of injury is whether appellant submitted medical evidence to establish that the employment incident caused a personal injury. Causal relationship is a medical issue[9] and generally must be shown by rationalized medical evidence. Rationalized medical evidence is medical evidence, which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

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[6] *See Elaine Pendelton*, *supra* note 2.

[7] *See Shirley A. Temple, supra* note 4 at 407; *Joseph H. Surgener* 42 ECAB 541, 547 (1991).

[8] *See Shirley A. Temple, supra* note 4 at 407; *Constance G. Patterson*, 41 ECAB 206 (1989).

[9] *Mary J. Briggs*, 37 ECAB 578 (1986).

[10] *Gary L. Fowler*, 45 ECAB 365 (1994).

The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relationship.[11]

In his July 28, 1998 report, Dr. Twilla diagnosed chronic pain due to lumbar disc disease and right neck pain, bilateral rotator cuff tears and right carpal tunnel syndrome and related appellant's conditions to the June 6, 1998 employment incident. However, he failed to provide specific supporting medical rationale explaining the relationship between appellant's fall and his diagnosed conditions. Dr. Twilla stated, "It is my opinion that the fall directly aggravated [appellant's] numerous other conditions" but he did not provide reasons for that conclusion.

Also, the physician's opinion that appellant's condition was aggravated by the June 6, 1998 employment incident lacks medical certainty as Dr. Twilla merely stated that appellant's conditions "seem to be compatible with the fall and with prior problems that [appellant] has experienced."

The other medical evidence of record, including Dr. Twilla's notes dated June 6 to July 28, 1998, Dr. Barnett's reports dated June 18 to October 19, 1998 and Dr. Canale's report dated July 6, 1998, are of diminished probative value because they do not provide a rationalized medical opinion relating appellant's condition to the June 6, 1998 employment incident. Appellant's February 23, 1999 hearing testimony and statements dated July 7, 1998 to March 25, 1999 have no probative value as causal relationship is a medical issue and appellant, a lay person, is not competent to render a medical opinion.[12]

[11] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[12] *See James A. Long*, 40 ECAB 538, 542 (1989).

The decisions of the Office of Workers' Compensation Programs dated April 22, 1999 and September 4, 1998 are affirmed.

Dated, Washington, DC
October 4, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member