U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALAN C. CORTEZ and DEPARTMENT OF THE NAVY, MARINE CORPS LOGISTICS BASE, Albany, GA

Docket No. 03-2108; Submitted on the Record;
Issued November 10, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained a right shoulder injury in the performance of duty on June 10, 2002.

On June 11, 2002 appellant, then a 37-year-old heavy mobile equipment repairer, filed a claim alleging that on June 10, 2002 he injured his right collar bone and shoulder, when pulling and lifting tires. Appellant returned to work on June 15, 2002.

In a letter dated June 24, 2002, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

In response to the Office's request, appellant submitted an attending physician's report dated June 27, 2002 from Dr. D.Q. Harris, a Board-certified orthopedist, who diagnosed right shoulder pain and noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. Dr. Harris noted a history of injury and advised that appellant could resume work with medical restrictions of no heavy or overhead work.

In a decision dated July 29, 2002, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that his condition was caused by the injury on June 10, 2002 as required by the Federal Employees' Compensation Act.[1]

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Act 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

[1] 5 U.S.C. §§ 8101-8193.

States within the meaning of the Act, that the claim was filed within the applicable time limitation 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] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[7] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[8]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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. The weight of medical evidence is determined by its reliability, its probative

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

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Elaine Pendleton, supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *Id.* at 255 and 256.

[8] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

It is not disputed that appellant was performing duties as a heavy mobile equipment repairer on June 10, 2002, pulling and lifting tires. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that his alleged shoulder condition is causally related to the implicated employment factors. On June 24, 2002 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit a narrative medical report from his attending physician addressing how the employment factors caused or aggravated his shoulder condition. The only report submitted by appellant was an attending physician's report dated June 27, 2002 from Dr. Harris, who diagnosed right shoulder pain. The doctor indicated with a checkmark "yes" that the appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of diminished probative value. Dr. Harris noted a history of injury and advised that appellant could resume work with medical restrictions of no heavy or overhead work. However, the physician did not include a rationalized opinion regarding the causal relationship between appellant's right shoulder condition and the lifting of tires on June 10, 2002.[10] Therefore, this report is insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[11] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.[12]

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *See Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

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

[12] With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).

The decision of the Office of Workers' Compensation Programs dated July 29, 2002 is hereby affirmed.

Dated, Washington, DC
November 10, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member