U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES M. WILSON and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICES CENTRAL REGION, Richmond, Va.

Docket No. 96-1308; Submitted on the Record;
Issued April 24, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his lower and upper back, hips, legs and neck in the performance of duty on July 13, 1995.

On July 20, 1995 appellant, then a 35-year-old maintenance mechanic filed a notice of traumatic injury and claim for compensation/continuation of pay (Form CA-1) alleging that he injured his lower and upper back, hips, legs and neck in the performance of duty on July 13, 1995.[1] Appellant alleged that he "was down on one knee working on [the] AC [air conditioning] unit and went to stand and felt a paralyzing shock from [his] lower back to neck." Appellant stopped work on July 14, 1995, returned to work on July 15, 1995, was placed on limited-work restrictions on July 25, 1995, stopped work again on August 7, 1995 and returned to full-duty status on August 14, 1995. In a decision dated November 7, 1995, the Office denied appellant's claim on the grounds that fact of injury was not established. In an accompanying memorandum, the Office noted that the evidence of record failed to establish that appellant sustained an injury as alleged because it only pertained to a prior April 20, 1994 accepted employment-related injury.

[1] The record shows that appellant has a history of back injuries/conditions starting as far back as 1987 or 1988 and receives a twenty percent disability through the Veterans Administration. The record also reveals that appellant and his supervisor filed a notice of recurrence of disability claim Form CA-2a, under claim number A6-597269 on July 25, 1995, which alleged that appellant sustained a recurrence of disability due to his April 20, 1994 accepted employment-related back strain. However, appellant's notice of recurrence of disability has not been adjudicated by the Office of Workers' Compensation Programs. If appellant wishes to pursue his notice of recurrence of disability claim Form CA-2a, received by the Office on August 9, 1995, he should contact the Office. The issue of recurrence of disability is not before the Board at this time.

The Board has fully reviewed the case record and finds that appellant has not met his burden of proof in establishing that he sustained an injury to his lower and upper back, hips, legs and neck in the performance of duty on July 13, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that the essential elements of his or her claim[3] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[4] that the claim was timely filed within the applicable time limitation period of the Act,[5] 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.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

In order to determine whether a federal employee has sustained a traumatic 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. 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.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[9] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[10]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as

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[2] 5 U.S.C. §§ 8101-8193.

[3] *See Daniel R. Hickman,* 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[4] *See James A. Lynch,* 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[5] 5 U.S.C. § 8122.

[6] *See Melinda C. Epperly,* 45 ECAB 196 (1993); *Joe Cameron,* 42 ECAB 153 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[7] *David J. Overfield,* 42 ECAB 718 (1991); *Delores C. Ellyett,* 41 ECAB 992 (1990); *Victor J. Woodhams,* 41 ECAB 345 (1989).

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

[9] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[10] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.,* a physical impairment resulting in the loss of wage-earning capacity; *see Frazier V. Nichol,* 37 ECAB 528 (1986).

commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[11] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[12]

In the instant case, there is no dispute that the incident occurred at the time, place and in the manner alleged by appellant. However, an injury resulting from this incident has not been established. Appellant submitted a medical report dated August 7, 1995, from Dr. John K. Schuler, a Board-certified internist who indicated that he examined appellant on August 7, 1995 because of complaints with his lower back. He noted that appellant had a history of some lower back problems which dated back to the late 80's; that appellant had previously been diagnosed at the Veterans Administration Hospital of having ankylosing spondylitis. Dr. Schuler, went on to note that, appellant stated he had "a chronic aching pain in his back, hips, and legs, especially when he gets up in the morning and has been on his feet for a long period of time." He indicated that appellant had tenderness along the spine, particularly in the lumbosacral region; that his bending was limited to 3/4 of normal with forward flexion and lateral bending; rotation with some discomfort about both hips at extremes of external and internal rotation; and that appellant had normal neurovascular status in the lower extremities. Dr. Schuler indicated that x-rays showed a normal vertebral alignment; and that disc heights appeared to be well maintained, and stated that he did not see definite evidence of ankylosing spondylitis on these films. He noted that there are some very mild degenerative changes in appellant's hips being a little more to the right than the left and diagnosed appellant's condition as "uncertain." Dr. Schuler opined that "he, [appellant] at least, has a chronic lumbosacral strain," and indicated that a check of appellant's lab work was needed in order to see if there was an element of ankylosing spondylitis present before recommending treatment.

Dr. Schuler's medical report did not indicate an awareness of appellant's July 13, 1995 incident, provide a diagnosis or opinion, provide a history of appellant's preexisting condition, and/or incident, or otherwise provide a rationalized medical opinion based upon reasonable medical certainty, that there is a causal connection between appellant's incident of July 13, 1995 and any specific workplace factors. For example, the medical evidence did not explain how or why the kneeling down on one knee while working on an air conditioning unit, and the feeling of a paralyzing shock in appellant's lower back to his neck when he went to stand up caused or contributed to the presence or occurrence of a specific medical condition. He provided no reasoned medical opinion attributing appellant's complaints to an injury sustained at work on July 13, 1995. Dr. Schuler's medical opinion is, therefore, insufficient to meet appellant's burden of proof because it is speculative, equivocal, and of diminished probative value.

Furthermore, there is medical evidence in the record which predates July 13, 1995, the date of appellant's alleged injury, and is thus irrelevant to the main issue at hand, which is whether appellant sustained an injury to his lower and upper back, hips, legs and neck in the performance of duty on July 13, 1995. Moreover, the unsigned progress note dated July 14,

[11] *See Elaine Pendleton, supra* note 6.

[12] *See John J. Carlone, supra* note 8.

1995; the physical evaluative medical report from Mr. Dale Brockman, a physical therapist, dated July 26, 1995, and accompanying progress notes/treatment notes dated July 26, 28, and 31, 1995, are of no probative value under the Act since Mr. Brockman is a physical therapist and not a physician under the Act.[13]

[13] Section 8101(2) of the Act provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners with the scope of their practice as defined by the applicable state law. Only medical evidence from a physician as defined by the Act will be accorded probative value. Health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under the Act. Therefore, their opinions on causal relationship do no constitute rationalized medical opinion and have no weight or probative value; *see Barbara J. Williams*, 40 ECAB 649 (1988); *Jane A. White*, 34 ECAB 515 (1983)

The decision of the Office of Workers' Compensation Programs dated November 7, 1995 is affirmed.

Dated, Washington, D.C.
April 24, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member