U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CONSTANCE L. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Nashville, Tenn.

Docket No. 96-1314; Submitted on the Record;
Issued April 9, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on October 13, 1995; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits under 5 U.S.C. § 8128(a).

On October 14, 1995 appellant, a 29-year-old postal worker, filed a timely notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on October 13, 1995 she was involved in an employment-related automobile accident which left her with cuts on her face, a neck injury, a lower left side of the back and left shoulder injury.

Appellant submitted a treatment slip dated October 13, 1995 from Dr. Neil Dressler, Board-certified in emergency medicine, in support of her claim.

In a November 1, 1995 letter, the Office requested appellant to submit a medical report including: a history of the injury including any similar problems which may have preexisted the condition for which she was treated; the current clinical findings and results of any tests or x-rays performed; the diagnosis of the condition resulting from the injury; office treatment notes and tests reports since being treated for the injury; and in particular, a physician's rationalized medical opinion on the causal relationship between the alleged work injury and the condition for which she was being treated for. Appellant was allotted 30 days within which to submit the requested evidence.

Appellant did not respond to the Office's November 1, 1995 letter or submit factual or medical evidence to support her claim.

By decision dated January 9, 1996, the Office denied appellant's claim for compensation benefits for failure to demonstrate that she had sustained an injury as alleged and the fact of injury was not established. In an accompanying memorandum, the Office acknowledged that the

claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, the Office found that a medical condition resulting from the accepted trauma or exposure was not supported by medical evidence of file. The Office also noted that appellant was advised of the deficiency in her claim on November 1, 1995 and afforded an opportunity to provide supportive evidence; however, evidence sufficient enough to support the fact that appellant sustained an injury on October 13, 1995 had not been submitted.

By letter dated "January 18, 1995 [sic]" and received in the Office on January 21, 1996, appellant requested reconsideration. On reconsideration appellant reiterated:

> "On October 13, 1995 while on my mail route and of NO fault of her own, had an automobile accident. According to the state police accident report, I WAS NOT at fault, instead the narrow country roads on my route was the main contributing factor which caused another vehicle to hit me head on."

Appellant moreover stated:

> "At the time, I could n[o]t answer any questions nor assist in giving information at the scene for two reasons: First, I was rushed to the hospital, unable to give any statements and secondly, most important, Postmaster McDaniel [appellant's supervisor] FAILED, as required by federal law, to come to the scene and to the hospital to inquire about the circumstances of the accident and to check on me."

Appellant went on to say that on November 6, 1995 Postmaster McDaniel paged her at home in order to terminate her because of this incident. She also stated that she was still being treated for her injuries due to this incident.

In a decision dated March 12, 1996, the Office denied appellant's application for review on the grounds that the evidence submitted was either irrelevant and immaterial in establishing the fact that an injury was sustained on October 13, 1995, as alleged.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on October 13, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that the essential elements of his or her claim,[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for

[1] 5 U.S.C. §§ 8101-8193.

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

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

[4] 5 U.S.C. § 8122.

which compensation is claimed are causally related to the employment injury.[5] 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.[6]

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

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 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 condition.[10] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[11]

In this case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, there is no rationalized medical opinion evidence to support the fact that appellant suffered an injury or disability causally related to any specific work factors. The only evidence submitted by appellant in this case is an October 13, 1995 treatment slip from Dr. Dressler and her own statements of the facts surrounding the alleged employment injury. Dr. Dressler's treatment slip and appellant's own statements are not relevant to the main issue of the present case, *i.e.*, whether appellant has submitted sufficient medical evidence to support her claim that she sustained an injury as a result of the October 13,

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

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

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

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

[9] 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).

[10] *See Elaine Pendleton*, *supra* note 5.

[11] *See Carlone*, *supra* note 7.

1995 incident.[12] Appellant was advised of the deficiency in this claim on November 1, 1995 and afforded the opportunity to provide supportive evidence, however, no medical evidence addressing whether any medical condition arose out of the incident of October 13, 1995, was submitted. Consequently, appellant has not submitted rationalized medical evidence, based on a complete history, explaining how and why her alleged medical condition is employment related. As noted above, the question of whether an employment incident caused a personal injury generally can only be established by medical evidence. Such evidence was requested by the Office but was not submitted by appellant.

The Board further finds that the refusal of the Office to reopen appellant's case for further consideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a) did not constitute an abuse of discretion.

To require the Office to reopen a case for merit review under section 8128(a) of the Act,[13] the Office's regulations provide that a claimant must: (1) show that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant or pertinent evidence not previously considered by the Office.[14] When a claimant fails to meet one of the above standards, it is a matter of discretion on the part of the Office whether to reopen a case for further consideration under section 8128(a) of the Act.[15]

In her "January 18, 1995 [sic]" request for reconsideration, appellant did not show that the Office erroneously applied or interpreted a point of law nor did she advance a point of law not previously considered by the Office. She merely reiterated her accounts of the facts surrounding the alleged employment injury, noted that she was still receiving treatment for her alleged injuries and advised that she would be filing the necessary medical information. However, appellant did not submit further medical evidence. The evidence submitted by appellant therefore did not constitute relevant and pertinent evidence not previously considered by the Office. Consequently, the evidence submitted by appellant did not meet the requirements set forth at 20 C.F.R. § 10.138. The Board finds that the Office properly denied appellant's application for reconsideration of her claim.

[12] *See Victor J. Woodhams, supra* note 6.

[13] Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application." 5 U.S.C. § 8128(a).

[14] 20 C.F.R. §§ 10.138(b)(1), (2).

[15] *Joseph W. Baxter*, 36 ECAB 228, 231 (1984).

The decisions of the Office of Workers' Compensation Programs dated March 12 and January 9, 1996 are affirmed.

Dated, Washington, D.C.
April 9, 1998

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member