U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM THOMAS TAYLOR and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Richmond, Va.

Docket No. 96-1539; Submitted on the Record;
Issued April 23, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty as alleged.

On July 13, 1995 appellant, then a 54-year-old postal clerk, filed a notice of recurrence of disability and claim for continuation of pay/compensation (Form CA-2a) alleging that on July 6, 1995 he sustained a recurrence of his right knee problem causally related to his accepted employment injury of November 25, 1986 and his back problem causally related to an injury in the 1970's. Appellant noted that he believed that his working a different copy machine and standing longer caused an aggravation of his permanent injuries. The employing establishment noted that appellant was rehabilitated to a position within his work restrictions.

On August 23, 1995 appellant filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on July 6, 1995 he first realized that his knee and lower back problems were caused or aggravated by his employment.[1] Appellant noted that he had previously injured his knee on November 25, 1986 and that he had injured his back originally in the 1970's. Appellant noted that he had "been standing longer than usual in the last few months working a different copy machine" and he believed that this caused an aggravation of his permanent injury.

In a report dated July 13, 1995, Dr. Frederick S. Fogelson, a Board-certified orthopedic surgeon, diagnosed "a flare[-]up of aching both in his back and in his arthritic knee after standing for an extended period and in air conditioning at work."

[1] The Office of Workers' Compensation Programs noted that appellant had been given a permanent light-duty position in which the alleged recurrence occurred. The Office recommended that appellant file a CA-2 for a new injury.

By letter dated September 29, 1995, the Office advised appellant that additional information was required. The Office requested appellant to describe the employment-related details he believed contributed to his condition, the development of his condition and a medical report from his treating physician explaining how his employment contributed to his condition.

In a letter dated October 2, 1995, appellant requested to change physicians. The Office denied appellant's request on October 6, 1995 on the basis that his claim had not been accepted yet.

In a letter dated October 20, 1995, appellant described the employment activities he believed contributed to his condition. Specifically, he opined that his using a different copier which required him to stand put pressure on his back and knee.

By letter dated November 2, 1995, the Office requested appellant to submit a report from his treating physician supported by medical rationale.

In a letter dated November 16, 1995, appellant again stated that he experienced a flare up due to the long periods of standing using the new copier. Specifically appellant stated:

> "The old Xerox machine's operation buttons were on the front edge allowing me to sit on a high back stool. The new Kodak machine's operation buttons are located toward the back. In order to use a stool, I had to stretch which caused my back to hurt. Therefore, I could not use the stool and had to stand."

By decision dated November 28, 1995, the Office determined that the evidence of record was insufficient to establish that an injury occurred. In so finding, the Office found the medical evidence of record deficient as none of the physicians discussed how appellant's employment duties contributed to an injury and there was no diagnosis of an injury arising out of the performance of appellant's employment. The Office also informed appellant that further medical treatment was not authorized.

In a letter dated December 13, 1995, appellant requested reconsideration of the denial of his claim and submitted reports from his treating physician, Dr. Fogelson. Appellant also stated that he has not recovered from his original back and knee injuries.

In a report dated January 6, 1995, Dr. Fogelson noted:

> "EXAM: His back continues to be intermittently troublesome without any clear cut neurogenic claudication.
>
> "X-RAY shows almost complete obliteration of the LF-L5 disc space. S/P his lumbar laminectomy in 1981. It is only a matter of time until this man will require a fusion."

By decision dated January 23, 1996, the Office denied appellant's claim on the basis that he failed to establish fact of injury. The Office also vacated the part of the decision denying medical treatment for the right knee as appellant had a previously accepted claim for an injury of

November 25, 1986 for the right knee. The Office found that appellant incurred pain on July 6, 1995 which is not a diagnosis and that he did not lose any time from work. The Office thus found that no fact of injury had been established to have occurred on July 6, 1995 for appellant's knee problem. Regarding appellant's back problem, the Office found that appellant failed to establish fact of injury as there are no open cases on record to entitle appellant to continued medical care for a back injury.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing 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 essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "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.[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

[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* 20 C.F.R. § 8101(a).

[5] 5 U.S.C. § 8122.

[6] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[7] *See Delores C. Ellyet*, 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 the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

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 conditions.[11] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[12]

The medical evidence of record substantiates a diagnosis that appellant had pain and a flare-up in his back and knee condition. Furthermore, appellant has described the physical requirements of his position on July 6, 1995 which he believes caused him to experience back and knee pain. The evidence of record, however, does not establish that the alleged factors of employment caused or aggravated the diagnosed condition.

The mere fact that a condition develops or progresses during a period of federal employment is in and of itself insufficient to entitle an employee to benefits under the Federal Employees' Compensation Act. Additionally the fact that work activities may produce symptoms revelatory of an underlying condition does not raise an inference of causal relationship between the condition and the employment.[13] Causal relationship may not be inferred but must be established by rationalized medical opinion evidence which explains how the implicated factors of employment caused the diagnosed condition.

Dr. Fogelson's reports are the only medical evidence of record which addresses the issue of causal relationship. While Dr. Fogelson relates appellant's flare-up to his employment, he has not provided medical rationale explaining how appellant's employment duties caused a disabling condition. Thus, as the medical evidence of record does not causally relate the diagnosed condition to appellant's employment, but only establishes that work activities produced symptoms of pain or "flare-up", appellant has not met his burden of proof.

[11] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[13] *Norman E. Underwood*, 43 ECAB 719 (1991).

The decisions of the Office of Workers' Compensation Programs dated January 23, 1996, and December 13 and November 25, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 23, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member