U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VENNECIA MASON and DEPARTMENT OF VETERANS AFFAIRS, ST. ALBANS MEDICAL CENTER, Brooklyn, N.Y.

Docket No. 96-1754; Submitted on the Record;
Issued August 20, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an injury to her right shoulder in the performance of duty.

On November 25, 1994 appellant, then a 41-year-old food service worker, filed a notice of traumatic injury, claiming that she hurt her right arm while pushing and pulling a meal truck whose wheels were faulty. The employing establishment controverted the claim, noting that appellant had not reported any injury to her supervisor until two days later and had filed a notice of occupational disease involving her right shoulder in July 1994.

On February 8, 1995 the Office of Workers' Compensation Programs informed appellant that the information submitted with her claim was insufficient and that she needed to provide medical documentation discussing her November 1994 injury and not her preexisting shoulder injury in July 1994.

On March 8, 1995 the Office denied the claim on the grounds that the evidence failed to establish that her injury occurred in the pod. The Office noted that the medical evidence pertained to appellant's pre-existing shoulder injury and did not describe any injury on November 24, 1994.

Appellant timely requested an oral hearing and stated that she had informed her supervisor of the pain in her arm and had completed an injury form. Appellant submitted a March 2, 1995 report from her treating physician, Dr. Malik Akhtar, an orthopedic surgeon who stated that she had initially hurt her shoulder on April 28, 1994 while pushing food trucks. Dr. Akhtar diagnosed a sprained shoulder and appellant returned to work on light duty, but reinjured her right upper extremity in November 1994. He added that appellant needed surgical decompression and repair of her rotator cuff. Dr. Akhtar repeated these statements in a May 24, 1995 letter.

At the hearing on August 29, 1995 appellant submitted an August 23, 1995 report from Dr. Akhtar, who stated that he had treated appellant for repeated trauma to her right shoulder over a period of time caused by pushing large food trucks with faulty wheels. He added that appellant had injured her shoulder "abruptly" on April 28, 1994 and later in November 1994 while performing similar duties. Dr. Akhtar diagnosed impingement and performed an acromioplasty with resection of a rotator cuff tear on July 25, 1995.

On December 14, 1995 the hearing representative denied the claim on the grounds that the medical evidence failed to establish that appellant sustained an injury from the employment incident on November 24, 1994. The hearing representative noted that Dr. Akhtar failed to provide a rationalized opinion on the causal relationship between the work incident and his diagnosis.

Appellant requested reconsideration and stated there was a "misunderstanding" in the hearing transcript. On February 15, 1996 the Office denied appellant's request on the grounds that her letter neither raised substantive legal questions nor included new and relevant evidence and was, therefore, insufficient to warrant review of its prior decision.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained any injury in the performance of duty.

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 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 or specific condition for which compensation is claimed is 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 a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.[4] The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[5] The injury must

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Id*.

[4] *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

[5] 20 C.F.R. § 10.5(15).

be caused by a specific event or incident or series of events of incidents within a single workday or shift.[6]

In determining whether an employee sustained an injury in the performance of his duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components considered in conjunction with one another.[7] The first component to be established is that the employee actually experienced the employment incident at the time, place, and in the manner alleged. In some cases, this first component can be established by an employee's uncontroverted statement that is consistent with the surrounding facts and circumstances and his subsequent course of action.[8] The second component, whether the employment incident caused a personal injury, generally must be established by medical evidence.[9]

In this case, the Office accepted the fact that appellant had experienced pain in her right arm on November 24, 1994 but informed appellant that she had to submit a narrative medical opinion describing how the work incident caused her disabling injury. The hearing representative also explained to appellant that she needed to provide medical evidence of treatment for her shoulder from November 24, 1994 through the surgery she underwent in July 1995.

The Board finds that the medical reports from Dr. Akhtar do not establish that the November 24, 1994 work incident caused any injury. In a form report completed on December 9, 1994, Dr. Akhtar diagnosed right shoulder impingement, related this condition to appellant's work by checking the "yes" response, and stated that appellant needed surgery. This report contains no rationale explaining Dr. Akhtar's conclusion.[10]

In March 1995 Dr. Akhtar stated that appellant reinjured her right upper extremity on November 24, 1994 while pulling the food truck with jammed wheels but did not explain how the conditions he diagnosed, impingement and rotator cuff tear, were related to the work incident and caused disabling injury. Thus, this report is insufficient to meet appellant's burden of proof.[11]

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[6] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a, (June 1995); *see Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

[8] *Edgar L. Colley*, 34 ECAB 1691, 1695 (1983).

[9] *John J. Carlone*, 41 ECAB 354, 357 (1989). Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540, 551 (1993). Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

[10] *See Ruth S.* Johnson, 46 ECAB 237, 242 (1994) (finding that a physician's opinion on causal relationship that consists only of checking "yes" to form questions has little probative value).

[11] *See Alberta S. Williamson*, 47 ECAB ___ (Docket No. 94-1762, issued May 7, 1996) (finding that appellant failed to submit a rationalized medical report based on a complete factual and medical background explaining why

Finally, Dr. Akhtar attempted to clarify "the type of injury and repeated trauma" sustained by appellant at work. The physician stated that appellant had to pull and push heavy trucks and this duty required constant use of her arm in an extended position. Dr. Akhtar added that the "repeated trauma" aggravated her shoulder, which was originally injured on April 28, 1994, and appellant had to stop work on November 24, 1994 because of the pain.

Again, Dr. Akhtar has provided no medical explanation for his conclusion that repetitive trauma on November 24, 1994 caused appellant any injury. The physician also failed to link appellant's diagnosed conditions with the November 24, 1994 incident at work. Thus, Dr. Akhtar does not opine that the specific work incident either caused or aggravated appellant's diagnosed shoulder impingement and rotator cuff tear. In fact, the medical evidence indicates that these conditions preexisted the November 24, 1994 work incident.

The February 15, 1996 and December 14, 1995 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
August 20, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

her condition was contracted in the performance of duty).