U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK DUQUETTE and U.S. POSTAL SERVICE,
POST OFFICE, Franklin, Mass.

Docket No. 96-1863; Submitted on the Record;
Issued July 8, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on March 22, 1995, as alleged.

On April 11, 1995 appellant, then a 55-year-old custodian, filed a notice of traumatic injury (Form CA-1) alleging that on March 22, 1995, he was lifting boxes of metal dividers, which caused a hernia in his left groin area. On the reverse side of the form appellant's supervisor stated, "my knowledge is limited to employee's statements." Accompanying the claim form was an April 17, 1995 letter, from the employing establishment in which it controverted appellant's claim, stating that it was not made aware of the alleged incident until April 11, 1995, twenty (20) days after the alleged incident and that appellant continued to work on March 22, 1995 without apparent difficulty.

By letter dated May 3, 1995, the Office of Workers' Compensation Programs requested detailed factual and medical information from appellant, specifically, a detailed description of how the injury occurred, the immediate effects of the injury and what he did immediately thereafter, what if any other injury he sustained between the date of injury and date he first reported it to his supervisor, an explanation for delay in seeking medical attention, a description of his condition between the date of injury and date he first received medical attention, what if any similar disability or symptoms he had before the injury and a completed attending physician's report (Form CA-20).

By letter dated May 26, 1995, the employing establishment submitted a May 16, 1995 report, by Dr. Peter M. Mowschenson, a Board-certified surgeon, in which he stated that appellant was unable to return to work until approximately June 23, 1995, as he needed time to recover following surgery; an attending physician's report (Form CA-20) dated May 12, 1995 by Dr. Mowschenson, which included a history of "left groin lump," a diagnosis of hernia and on the question of whether he believed the condition was caused or aggravated by appellant's employment he stated, "could have been"; and a duty status report (Form CA-17) dated May 12,

1995 by Dr. Mowschenson indicating the history of injury given by appellant corresponds with item 7 on the front of the form,[1] and diagnosing a left inguinal hernia.

On June 6, 1995 the Office received appellant's response to its May 3, 1995 request for additional information. Appellant stated that he was lifting boxes weighting approximately 50 to 60 pounds containing metal dividers and moving them to the cellar unassisted. He went on to say that at the time of the incident he felt a pull or strain but no pain, "so I didn't think anymore about it until [there was swelling and pain]. Appellant also stated that "I had a date for a physical on March 27, 1995" so the area of swelling and pain was examined and a hernia was diagnosed. Appellant stated that he had had no other similar disability or symptoms before the alleged injury.

In a decision dated June 27, 1995, the Office denied appellant's claim for failure to establish fact of injury. The Office found that appellant, a federal employee, filed a timely claim for compensation. However the Office also found that the evidence of record did not support that the claimed event, incident, or exposure occurred at the time, place and in the manner alleged. Furthermore, the Office found that the evidence did not demonstrate that appellant sustained an injury as a result.[2]

By letter dated January 4, 1996, appellant requested reconsideration of the June 27, 1995 decision. In support of the request for reconsideration, appellant submitted various documents including progress notes from Dr. Bruce M. Pastor, a Board-certified internist, which included a March 27, 1995 entry noting a bulge in left inguinal area "which is from a hernia that must be new" and referral to a surgeon; an October 6, 1995 attending physician's report (Form CA-20) by Dr. Pastor which provided a history of groin strain while lifting heavy boxes at work, diagnosing a left inguinal hernia and checking "yes" to the question of whether the condition was caused or aggravated by appellant's employment; a May 9, 1995 operative report by Dr. Mowschenson, in which he diagnosed left inguinal hernia and described the hernia repair procedure performed on appellant; office notes dated April 13 and June 8, 1995 by Dr. Mowschenson noting no significant past medical or surgical history, diagnosing an inguinal hernia, and follow up history of recovering well from hernia repair; and an October 2, 1995 attending physician's report (Form CA-20) by Dr. Mowschenson diagnosing a left inguinal hernia and checking "yes" to the question of whether appellant's condition was caused or aggravated by his employment and noting "[patient] has to lift heavy items at work."

By decision dated March 7, 1996, the Office, after reviewing the case on its merits, denied appellant's January 4, 1996 request for reconsideration finding that the evidence submitted was insufficient to warrant modification of the prior decision.

[1] Item 7 on the CA-17 had not been completed.

[2] The Board notes that in its June 27, 1995 decision, the Office stated that claimant was advised of the deficiency in the claim, and afforded the opportunity to provide supportive evidence. However, by letter dated May 3, 1995, the Office requested factual information and a completed attending physician's report, all of which it received. Then the Office denied the claim finding the evidence insufficient.

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 limitations of the Act.[4] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[5] that the injury was sustained while in the performance of duty,[6] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[7] 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.[8]

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.[9] In this case, the Office found that the evidence of record failed to support that the incident occurred as alleged. Appellant has consistently maintained that on March 22, 1995 he was lifting boxes of metal dividers weighing approximately 50 to 60 pounds and moving them to the cellar unassisted. It is not disputed that appellant worked on March 22, 1995, or that he was performing his custodial duties as he described them. Consequently, the Board finds that appellant has established that the incident occurred on March 22, 1995, as alleged.

The second component of fact of jury 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.[10]

The Board finds that this case is not in posture for decision and must be remanded for further evidentiary development.

In the present case, the medical evidence submitted included, inter alia, an attending physician's report dated May 12, 1995 completed by Dr. Mowschenson diagnosing a hernia and

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[3] 5 U.S.C. §§ 8101-8193.

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

[5] *Robert A. Gregory*, 40 ECAB 478 (1989).

[6] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *Steven R. Piper*, 39 ECAB 312 (1987).

[8] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[10] *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

responding to the question on causal relationship by stating "could have been"; progress notes by Dr. Pastor noting that he saw appellant on March 27, 1995 and diagnosing an inguinal hernia; an attending physician's report dated October 2, 1995 by Dr. Mowschenson diagnosing a left inguinal hernia and checking "yes" to the question on causal relationship and also stating "[patient] has to lift heavy items at work"; and an attending physician's report by Dr. Pastor dated October 6, 1995 noting a history of "[patient] noticed groin strain while lifting heavy boxes at work."[11]

The Board finds that given the absence of any opposing medical evidence, that the total evidence of record which contains a diagnosis and some support for causal relationship, is sufficient to require further development of the record by the Office.[12] The evidence submitted by appellant is not sufficient to meet appellant's burden of proof, but does raise an uncontroverted inference of causal relationship between appellant's left inguinal hernia and the March 22, 1995 employment incident.

On remand, the Office should further develop the evidence by providing Drs. Pastor and Mowschenson with a statement of accepted facts and requesting that they submit narrative medical reports which include rationalized medical opinions on whether appellant's left inguinal hernia was caused or aggravated by the March 22, 1995 employment incident. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decisions of the Office of Workers' Compensation Programs dated March 7, 1996, and June 27, 1995 are set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, D.C.
July 8, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[11] The October 2 and October 6, 1995 attending physician's reports completed by Drs. Mowschenson and Pastor, respectively, were prepared after appellant, contacted them by letters dated September 25, 1995, and related the March 22, 1995 incident to them some six (6) months later.

[12] *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).