U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NAKIA ANTOINETTE FULLER and U.S. POSTAL SERVICE, POST OFFICE, Dallas, Tex.

Docket No. 96-1987; Submitted on the Record;
Issued May 26, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM, BRADLEY T. KNOTT

The issue is whether appellant has met her burden in establishing that she sustained a pulled muscle in the performance of duty on March 12, 1996.

On March 17, 1996 appellant, then a 21-year-old mail handler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she pulled a muscle in her back on March 12, 1996 when she picked up a heavy package.

In a undated note, Dr. E.J. Mason, appellant's attending Board-certified surgeon, noted the date of the injury as March 12, 1996, that he had been treating appellant since March 29, 1996 and that she was currently totally disabled for work and would be so for an indefinite period commencing March 29, 1996.

By letter dated April 29, 1996, the Office of Workers' Compensation Programs requested detailed medical evidence from appellant.

By decision dated May 31, 1996, the Office rejected appellant's claim for compensation on the grounds that fact of injury was not established. In an accompanying memorandum, the Office found there was sufficient evidence to establish that the claimed incident occurred as alleged, but that there was insufficient evidence to establish that a medical condition resulted from the accepted work incident.[1]

The Board finds that appellant has not met her burden of proof in establishing that she sustained a pulled muscle in her back in the performance of duty on March 12, 1996.

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[1] The Board notes that appellant submitted additional evidence subsequent to the Office's May 31, 1996 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

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 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]

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[2] 5 U.S.C. § 8101 *et seq.*

[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).

[7] *See 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 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).

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

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

In this case, appellant has not submitted sufficient medical evidence to establish that she incurred an employment-related injury. While she submitted a note from Dr. Mason, appellant's attending Board-certified surgeon, which indicated that she was treated on the date of the employment incident and he found that appellant was totally disabled for an indefinite period commencing March 29, 1996. The report failed, however, to provide the results of a physical examination, stated no diagnosis nor explained how and why the employment incident caused a pulled muscle in appellant's back.[13] Consequently, she has not submitted rationalized medical evidence, based on a complete history, diagnosing her employment injury and explaining how and why her injury is employment related. As noted above, the question of whether an employment incident caused a personal injury generally can only be established by probative medical evidence. Such evidence was requested by the Office but was not submitted by appellant.

The decision of the Office of Workers' Compensation Programs dated May 31, 1996 is hereby affirmed.

Dated, Washington, D.C.
May 26, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[13] *See Victor J. Woodhams, supra* note 7.