U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Edison, N.J.

Docket No. 96-1668; Submitted on the Record;
Issued October 2, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that he sustained an injury in the performance of duty on September 3, 1995; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

On September 10, 1995 appellant, a mail handler, filed a claim alleging that on September 3, 1995 he worked 12 hours and when he got home, he had sharp pains in his lower back. By decision dated December 15, 1995, the Office determined that appellant had not established fact of injury. In the accompanying memorandum, the Office noted that it requested appellant to submit clarifying factual and medical information, but none was received. Thus, the Office found that there was insufficient evidence in the file regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office further found that the evidence of file did not support a medical condition resulting from the alleged work incident or exposure. By decision dated April 10, 1996, the Office denied appellant's request for reconsideration without merit review of the claim.

The Board has reviewed the record and finds that appellant has not established he sustained an injury in the performance of duty on September 3, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act [1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] 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. The second component is whether the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

employment incident caused a personal injury, and generally this can be established only by medical evidence.[3]

The evidence of file fails to support that a fact of injury occurred in this case. There is insufficient evidence in the file regarding whether or not the claimed event, incident or exposure occurred at the time, place and manner alleged. Appellant stated that on the claimed date of injury, he had worked 12 hours and when he got home, he had sharp pains in his lower back. He stated "I figured I had to injure myself at work sometime that night." The Office requested appellant to provide clarifying information and appellant responded by restating the facts outlined on the Form CA-1. Appellant has not described an incident occurring at work as the mechanism of his injury.

Moreover, the evidence of file does not support a medical condition resulting from the alleged work incident or exposure. Appellant has submitted an emergency room receipt which does not address causal relationship and two CA-17 forms. In the first CA-17 form dated September 11, 1995, the physician, whose signature is illegible, diagnoses LS strain but fails to address causal relationship. The second CA-17 form dated October 21, 1995 gives "negative" clinical findings and states that employee cannot recall how he injured his back.

Inasmuch as appellant was advised of the deficiencies in the factual and medical information and afforded the opportunity to provide clarifying and supportive evidence, the Board accordingly finds that appellant has not met his burden of proof in establishing he sustained an injury in the performance of duty.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for review of the merits.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[4] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.[5]

In this case, the only new evidence submitted in support of his request for reconsideration, was an extract from a publication entitled "Mayo Clinic: Family Health Book - the Muscles and Bones." This submission does not contain a medical opinion concerning any causal relationship between appellant's claimed condition and his alleged injury on September 3, 1995. Moreover, the Board has held that newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the causal relationship between a claimed condition and an employee's federal employment as such materials are of

[3] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[4] 20 C.F.R. § 10.138(b)(1).

[5] 20 C.F.R. § 10.138(b)(2); *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

general application and are not determinative of whether the specific condition claimed is related to the particular employment factors alleged by the employee.[6] Therefore, this evidence does not pertain to the relevant issue of the case, *i.e.*, whether appellant has submitted sufficient rationalized medical and factual evidence to establish that he sustained an employment-related injury. The Board has held that the submission of evidence which does not address the particular issue involved is of little probative value.[7] As the other evidence submitted repeats or duplicates evidence already in the case record, it has no evidentiary value and does not constitute a basis for reopening a case.[8]

Inasmuch as appellant failed to submit any new and relevant medical evidence or advance substantive legal contentions in support of his request for reconsideration, appellant's reconsideration request is insufficient to require the Office to reopen the claim for further consideration of the merits. Moreover, appellant was previously advised of what was needed to require the Office to reopen his case in the list of appeal rights which were enclosed with the Office's decision of December 15, 1995.

The decisions of the Office of Workers' Compensation Programs dated April 10, 1996 and December 15, 1995 are hereby affirmed.

Dated, Washington, D.C.
October 2, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] *William C. Bush*, 40 ECAB 1064, 1075 (1989).

[7] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

[8] *Supra* note 7.