U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BILLY DUANE YOST and DEPARTMENT OF THE INTERIOR, JOB CORPS, FORT SIMCOE, White Swan, Wash.

Docket No. 97-298; Submitted on the Record;
Issued October 26, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant established that he had any continuing disability from the accepted work injury after September 5, 1989.

On December 14, 1988 appellant, then a 20-year-old job corpsman, filed a notice of traumatic injury, claiming that he hurt his head and neck when a television set toppled over on him as he fell backwards. The Office of Workers' Compensation Programs accepted the claim for a concussion, cervical and thoracic strains, and right elbow contusion and paid appropriate compensation.

On June 16, 1989 Dr. Mukund N. Dhruva, a neurologist, released appellant for regular work, effective June 5, 1989, with restrictions of no heavy lifting or repetitive bending for two to three months. Subsequently, the Office accepted the conditions of trapezius strain, since resolved, and temporomandibular joint (TMJ) dysfunction on the right side of the jaw.

On June 21, 1990 appellant's attorney wrote to the Office inquiring whether appellant was entitled to past and continuing wage-loss compensation from June 4, 1989. The Office responded in a letter dated July 2, 1990 that there was no medical evidence to support appellant's ongoing disability for work after June 4, 1989 and what condition appellant believed caused any disability or wage loss was unknown.

Following the submission of further medical evidence, the Office informed appellant on March 7, 1991 that his compensation after September 9, 1989 would be disallowed on the grounds that the medical evidence established that appellant was capable of returning to his regular duties with the employing establishment as of that date. The Office noted that none of the medical records submitted by appellant addressed his inability to return to his usual work and that appellant's mental retardation preexisted the work injury.

On March 26, 1991 appellant requested reconsideration and stated he would submit medical documentation from Dr. Gerald H. Ellison, Board-certified in family practice and appellant's attending physician. The Office informed appellant that his case would be assigned for reconsideration upon receipt of the new evidence. Appellant submitted an April 7, 1991 report from Dr. Ellison, who stated that he would evaluate appellant's ability to work after he completed a three-month physical therapy program authorized by the Office. In a letter dated April 30, 1991, appellant's attorney informed the Office that Dr. Ellison's evaluation would be submitted for reconsideration as soon as it was received.

Following appellant's referral to a panel of physicians for a second opinion evaluation and their August 26, 1992 report, the claim became inactive, although periodic letters from appellant's attorney regarding the payment of medical bills were received.

On February 29, 1996 the Office denied reconsideration on the grounds that the medical evidence established that appellant was not disabled after September 5, 1989 when the restricted duty ordered by Dr. Dhruva ended. The Office noted that none of the medical reports submitted since the prior decision on March 7, 1991 addressed the issue of appellant's capability for work. The Office added that it had erred in failing to address appellant's request for reconsideration in 1991.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained any disability for work after September 9, 1989.

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 (1974).

[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 several injuries resulting from the December 13, 1989 incident, noting that appellant was born with cranial stenosis and subsequent surgery left him with residual brain damage, including mild retardation, slurred speech, and bodily numbness. The Office determined that because the employing establishment had no light duty available, appellant was entitled to wage-loss compensation from June 4 until September 5, 1989.

After that time, however, appellant was fit to work according to his treating physician, Dr. Dhruva, who stated in a June 5, 1989 report that appellant was able to perform a job that did not require heavy lifting or repetitive bending for two to three months. Dr. Dhruva added in an April 2, 1990 report that he had no further definitive treatment for appellant apart from mild supportive symptomatic management with a minimum amount of medication, home exercise program, and perhaps weight reduction.

As the Office pointed out, none of the medical evidence submitted by appellant demonstrated that he was unable to perform the duties of the position he held when injured in 1989. Inasmuch as the burden is on appellant to establish that his disability for work was caused by the accepted injury, the Board finds that appellant has failed to meet his burden of proof.[10] Therefore, the Office properly denied his claim for wage-loss compensation after September 5, 1989.

---

[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 Charlene R. Herrera*, 44 ECAB 361, 371 (1993) (finding that appellant failed to meet her burden of proof in establishing that she was disabled because of overuse syndrome).

Appellant's attorney argues that the history of this claim has "generated significant confusion" over payment of medical bills for treatment and asks that the claim remain open.

Section 8103 of the Act[11] provides for the furnishing of "services, appliances, and supplies prescribed or recommended by a qualified physician" which the Office, under authority delegated by the Secretary, "considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation." While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure was incurred for treatment of the effects of an employment-related injury or condition.[12] Thus, to be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[13]

Here, appellant is entitled to payment of medical bills for treatment of the work injuries accepted by the Office -- a concussion, cervical and thoracic strains, right elbow contusion, TMJ dysfunction, and a resolved trapezius strain. However, appellant has been diagnosed with other conditions such as a right knee problem, headaches, and a congenital cervical anomaly that have not been shown to be a result of the 1989 work injury. Therefore, the Office is not responsible for paying the medical bills incurred for treatment of these conditions.[14]

The February 29, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

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

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[11] 5 U.S.C. § 8103.

[12] *Mamie L. Morgan*, 41 ECAB 661, 667 (1990); *see* 5 U.S.C. § 8103(a).

[13] *Debra S. King*, 44 ECAB 203, 209 (1992).

[14] *See Carolyn F. Allen*, 47 ECAB ___ (Docket No. 94-828, issued December 7, 1995) (finding that payment of medical expenses does not constitute acceptance of a claim).