U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUDOLPH McGLONE, JR. and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

Docket No. 97-1981; Submitted on the Record;
Issued April 8, 1999

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty on January 3, 1997.

On January 3, 1997 appellant, a maintenance operations supervisor, filed a claim alleging that while handing out assignments he felt pain on the left side of his chest and across his shoulders. Appellant indicated that he received medical treatment on that date. The record indicates that appellant stopped working on January 13, 1997 and returned to work on January 22, 1997.

By decision dated February 20, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that the medical evidence was insufficient to meet appellant's burden of proof.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty on January 3, 1997.

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]

In the present case, appellant alleged that he was handing out assignments on January 3, 1997, and there is no contrary evidence. With respect to medical evidence, however, the record does not contain an opinion as to causal relationship between a diagnosed condition and employment activity on January 3, 1997. The record indicates that appellant received treatment on January 3, 1997 at the employing establishment health unit, where a Dr. Rossman indicated that appellant would be sent to the hospital emergency room for evaluation.[4] A hospital emergency room physician diagnosed thoracic strain, thoracic outlet syndrome, gastritis and costochondritis. There is no opinion as to causal relationship with any employment activities. In a duty status report dated January 6, 1997, Dr. George Bradford, a family practitioner, diagnosed cervical, trapezius and chest wall strain. Dr. Bradford did not provide an opinion on causal relationship.

Prior to the February 20, 1997 Office decision, appellant submitted medical reports from a hospital counseling program. These reports did not address the relevant issues, and appellant indicated on appeal that they were submitted in error.

The Board accordingly finds that, based on the evidence before the Office at the time of the February 20, 1997 decision, appellant did not meet his burden of proof in establishing an injury in the performance of duty on January 3, 1997. Appellant did not provide probative medical evidence as to causal relationship between a diagnosed condition and his employment activities on January 3, 1997, and therefore the Office properly denied his claim.

The Board notes that appellant submitted additional evidence after February 20, 1997, and the Office issued a decision dated May 23, 1997 with respect to a request for reconsideration. Since appellant had filed his appeal with the Board on May 5, 1997, the May 23, 1997 Office decision was issued while the Board had jurisdiction over the case. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case on the same issues.[5] The May 23, 1997 Office decision is therefore found to be null and void. The only decision reviewed on this appeal is the February 20, 1997 decision and the only evidence reviewed is the evidence before the Office at the time of this decision.[6]

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

[4] The Board notes that the Office has discretionary authority to authorize medical treatment in "emergency or unusual circumstances," and must exercise that authority; *see Thomas W. Keene*, 42 ECAB 623 (1991); 20 C.F.R. § 10.401(f). If the Office has not already done so, it should exercise its discretionary authority regarding authorization for the hospital emergency room treatment on January 3, 1997.

[5] *Douglas E. Billings*, 41 ECAB 880, 895 (1990).

[6] The Board is limited to evidence that was before the Office at the time of the final decision. 20 C.F.R § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated February 20, 1997 is affirmed.

Dated, Washington, D.C.
April 8, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member