U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILFRED PANTOJA and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Brooklyn, N.Y.

Docket No. 97-595; Submitted on the Record;
Issued January 25, 1999

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 to his lower back and right shoulder in the performance of duty on May 9, 1996.

On June 4, 1996 appellant, then a 46-year-old x-ray technician, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that he injured his lower back and right shoulder while assisting a doctor in picking up a patient onto a bed. On the reverse side of this form the employing establishment indicated that its knowledge of the alleged incident was in agreement with the statements made by appellant.

In support, appellant submitted a work restriction evaluation from Dr. Iftikhar U. Din, an attending physician, dated June 4, 1996. Dr. Din's restrictions included no lifting, bending, squatting, climbing or kneeling with four hours a day of sitting, walking and twisting.

The employing establishment also submitted on behalf of appellant a report of accident from appellant's supervisor dated June 4, 1996 and countersigned by Dr. Alan M. Kantor, a Board-certified radiologist, on June 7, 1996. In this report, appellant's supervisor noted that appellant's alleged injury occurred on May 9, 1996 and stated:

> "[Appellant] stated to me that after the [computerized axial tomography] CAT scan was done on the patient, he and the radiologist, Dr. Flyer [unidentifiable] was going over the film on the monitor and the patient physician was talking to the patient while he was still laying on the gurney and when he look[ed] up the patient had gotten off the gurney and started to walk toward his bed and he fell to the ground, he ran over to the patient to check on him and he thought that the patient has [sic] been coded, the cardiac arrest team was called and in the interim he and the physician tried to lift the patient off the floor onto the bed and at this instant is when he wrench his back. I advised [appellant] that very same day to

> seek medical care, he said he would, I received the CA-1 on June 6, 1996. [Appellant] know[s] the mechanisms to transport a patient, due to the circumstances of the patient's illness, it was done on instant and [appellant] said in the future he will not react in the same manner."

By letter dated July 11, 1996, the Office of Workers' Compensation Programs explained that there was insufficient evidence in the file to establish that appellant sustained an injury on May 9, 1996. Appellant was therefore advised of the type of factual and medical evidence needed to establish his claim and requested that he submit such. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed injury and specific employment factors. Appellant was allotted 30 days within which to submit the requested evidence.

Appellant responded to the Office's July 11, 1996 letter by submitting a prescription note from Dr. Din dated June 25, 1996, indicating that appellant was out of work from June 25 to July 14, 1996 and could return to work on July 15, 1996. No further evidence was received.

By decision dated October 8, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to support the fact of an injury in this case. In an accompanying memorandum, the Office noted that appellant was advised of the deficiency in his claim on July 11, 1996 and afforded an opportunity to provide supportive evidence; however, evidence sufficient enough to support that appellant sustained an injury to his lower back and right shoulder on May 9, 1996, has not been submitted.

On appeal appellant contends that he neither received a copy of the Office's July 11, 1996 informational letter, nor the Office's October 8, 1996 decision. Appellant therefore argues that this correspondence must have been sent to his former wrong address of record and he has not had an opportunity to cure the defects of his claim as noted above.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury to his lower back and right shoulder in the performance of duty on May 9, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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 timely filed within the applicable time limitation period of the Act, 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.[2] These are the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether a federal employee has 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.[4]

The second component of fact of injury 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, incident or exposure, the employee must submit rationalized medical opinion, based on a complete factual and medical background, supporting such a causal relationship.[5]

In the instant case, it is not disputed that appellant's job required him to assist a physician to lift a patient onto a bed during the performance of his duties. Consequently, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, the Office found that the medical evidence submitted was insufficient to establish that the May 9, 1996 incident resulted in an injury, causally related to any specific workplace factors. Appellant has submitted insufficient medical evidence to support his claim that he sustained an injury to his lower back and right shoulder as a result of the May 9, 1996 incident. Appellant was advised of the deficiency in his claim on July 11, 1996 and afforded the opportunity to provide supportive evidence, however, sufficient medical evidence addressing whether any medical condition arose out of the May 9, 1996 incident has not been submitted.

The medical evidence of file did not demonstrate an awareness of appellant's May 9, 1996 employment incident or give a diagnosis or opinion, dates, an history of appellant's condition or even provide a rationalized medical opinion, based upon reasonable medical certainty, that there was a causal connection between appellant's lower back and right shoulder and specific workplace factors. For example, neither Dr. Din nor Dr. Kantor explained how or why assisting a physician to lift a patient onto a bed caused or contributed to the presence or occurrence of a specific medical condition.[6] Therefore, these documents are insufficient to establish appellant's claim for benefits.

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

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

[5] *Kathryn Haggerty*, 45 ECAB 383 (1994).

[6] *Charles H. Tomasezewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

Additionally, regarding appellant's contention on appeal that he did not receive the Office's July 11, 1996 informational letter or October 8, 1996 decision, as they were sent to an former wrong address, the Board notes that in the June 4, 1996 claim form, appellant provided an address of "110-13 203[rd] Street, St. Albans, N.Y. 11412." The Office addressed the July 11, 1996 letter requesting additional information and its October 8, 1996 decision to appellant at the above-noted address. Although appellant states that he moved to a new address on June 30, 1996 and forwarded this change of address to his place of employment, the record does not contain a change of address. Therefore, the Office properly addressed the request for additional evidence and the decision to appellant's only address of record which he himself provided. Appellant did not provide any other address to the Office.

It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. This presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.[7] As the record clearly indicates that the July 11, 1996 information letter and October 8, 1996 decision was mailed to appellant at the address of record which appellant provided, the Board presumes that such documents were received at that address which appellant indicated was his residence. There is no returned mail in the file.

The decision of the Office of Workers' Compensation Programs dated October 8, 1996 is affirmed.

Dated, Washington, D.C.
January 25, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[7] *Michelle R. Littlejohn*, 42 ECAB 463 (1991).