

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICK W. LARKIN and DEPARTMENT OF VETERANS AFFAIRS,
LAW ENFORCEMENT TRAINING CENTER, North Little Rock, Ark.

*Docket No. 97-912; Submitted on the Record;
Issued January 22, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant established that he sustained an injury in the performance of duty.

On June 6, 1995 appellant, then a 25-year-old police officer, filed a notice of traumatic injury, claiming that on May 20, 1995 he over-exerted the veins and muscles in his lower left leg while on a training exercise. Appellant explained on June 14, 1995 that he "bumped" his lower leg against a metal railing while participating in a hostage negotiation exercise and experienced cramps and pain. Appellant added that he did not at first recall the incident because the leg did not bother him that much, but two days after he returned from the training to New York City, his leg became "badly inflamed and sore" and he sought medical treatment.

In support of his claim, appellant submitted medical reports from Dr. Norman Sveilich, an osteopathic practitioner and a Board-certified orthopedic surgeon, who noted that appellant's left leg had "multiple superficial varicosities" and diagnosed acute/chronic myositis/strain syndrome. Appellant also submitted emergency room notes dated June 3, 1995 describing mild varicose veins and swelling over a "defect" in his tibia and a report from a physical therapist.

On September 1, 1995 the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had failed to establish that he sustained an injury in the performance of duty. The claims examiner, Millie Martinez, discussed the conflicting accounts of the manner in which appellant was injured.

Appellant timely requested an oral hearing. The hearing representative vacated the September 1, 1995 decision and remanded the case to the Office for further evidentiary development. He found that appellant had sustained an injury in the performance of duty while on a training exercise but that Dr. Sveilich had not provided a specific work-related diagnosis.

On remand the Office asked Dr. Sveilich and Dr. Albert S. Heyman, Board-certified in internal medicine and neurology, to provide a narrative medical report on the nature and extent of appellant's disability, including a confirmed diagnosis, objective and clinical findings supporting the diagnosis and a reasoned opinion on how the May 20, 1995 injury resulted in the diagnosis and disability.

On June 27, 1996 the Office denied the claim on the grounds that the evidence failed to establish a causal relationship between appellant's leg condition and his federal employment. The Office noted that no evidence had been received from appellant's physicians and that appellant had been informed of the deficiencies in the medical evidence.

Appellant requested reconsideration and submitted a May 21, 1996 report from Dr. Alex Solowey, Board-certified in surgery. On September 25, 1996 the Office denied modification of its prior decision. The Office noted that Dr. Solowey failed to explain how appellant's chip fracture was related to the May 20, 1995 incident and provided no medical rationale for his conclusion that appellant's incompetent valves and venous varicosities were causally related to the physical trauma appellant sustained.

The Board finds that his case is not in posture for decision and must be remanded for further evidentiary development.¹

An employee seeking benefits under the Federal Employees' Compensation Act² 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.³ 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.⁴

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 an accident or event caused an injury as defined in the Act and its regulations.⁵ 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.⁶

¹ See *John J. Carlone*, 41 ECAB 354, 358 (1989) (finding that medical evidence submitted by appellant is sufficient, absent any opposing medical evidence, to require further development of the record).

² 5 U.S.C. §§ 8101-8193.

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Id.*

⁵ *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

⁶ 20 C.F.R. § 10.5(15).

The injury must be caused by a specific event or incident or series of events or incidents within a single workday or shift.⁷

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.⁸ The first component -- that the employee actually experienced the employment incident at the time, place and manner alleged -- as been established here. The second component, whether the employment incident caused a personal injury, generally must be established by medical evidence.⁹

In this case, Dr. Solowey noted the date of injury as May 22, 1995 and appellant explained that he was confused as to the exact date the incident occurred in the week-long training exercise. Dr. Solowey stated that appellant reported the injury on June 3, 1995 after returning home, explaining that he had suffered from extreme cramping in his leg during the training and only several days after the cramping ceased did he experience severe pain and find a lump just below his left knee.

Dr. Solowey stated that the emergency room examination on June 3, 1995 revealed a chip fracture of the tibia and mild varicosity directly over the area of the trauma. While x-rays showed no further damage to the bone, the mild varicosities worsened over the next several weeks and a venous duplex test confirmed incompetent valves in appellant's lower left leg. On February 12, 1996 appellant had a vein stripping operation on his left leg and returned to work several days later.

Dr. Solowey concluded that appellant's injuries were causally related to the training trauma on the basis that venous duplex tests "confirmed incompetent valves in the area of the trauma resulting from the injury," x-rays showed "positive damage" to the area of trauma on the tibia, an magnetic resonance imaging (MRI) scan showed loss of blood flow in the area of the trauma and confirmed bone damage and a venogram confirmed the diagnosis of varicosities.

The Office medical adviser reviewed Dr. Solowey's report and stated that he failed to discuss the causal relationship of appellant's chip fracture to the work incident and offered no reasoning for his conclusion that the incompetent valves and varicosities resulted from the training trauma. The Office medical adviser added that varicose veins did result from incompetent valves but that trauma was not a cause.

The Board finds that, while Dr. Solowey's report is insufficiently rationalized to meet appellant's burden of proof and the Office medical adviser stated that trauma did not cause

⁷ *Richard D. Wray*, 45 ECAB 758, 762 (1994).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995); see *Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

⁹ *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).

appellant's condition, Dr. Solowey's opinion is uncontradicted by a physician who examined appellant. As such, his report is sufficient to require the Office to develop the record further.¹⁰

On remand the Office should refer appellant, a statement of accepted facts, the medical records and a list of relevant questions to a specialist for a second opinion evaluation. After such development as the Office deems necessary, a *de novo* decision shall be issued.¹¹

The September 26, 1996 decision of the Office of Workers' Compensation is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
January 22, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

¹⁰ While appellant has the burden of establishing entitlement to compensation when the Office has undertaken the development of either factual or medical evidence, proceedings under the Act are not adversarial and the Office has an obligation to see that justice is done. 20 C.F.R. § 10.110(b); see *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

¹¹ Because this case is being remanded, appellant's argument that the September 25, 1996 decision must be set aside because the Office violated its procedures is moot. The Board notes that the senior claims examiner, Richard E. Meditz, decided appellant's request for reconsideration but was not involved in the initial September 1, 1995 decision denying appellant's claim. While Mr. Meditz' name was typed on the decision, it was made and signed by Ms. Martinez who also wrote the memorandum in support of the denial, as Mr. Meditz was on leave.