U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of XAVIER ALBINO ORNELAS and DEPARTMENT OF THE NAVY, LONG BEACH NAVAL SHIPYARD, Long Beach, Calif.

Docket No. 97-913; Submitted on the Record;
Issued January 6, 1999

DECISION and ORDER

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

The issue is whether appellant has established that he sustained an injury in the performance of duty on July 18, 1996, as alleged.

On July 29, 1996 appellant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he injured his lower back on July 18, 1996 when the forklift he was driving over railroad tracks gave him a sudden jolt. By letter dated August 23, 1996, the Office of Workers' Compensation Programs requested, *inter alia*, that appellant submit additional information describing in detail exactly how his injury occurred. The Office also requested appellant to state why he delayed reporting the injury and to submit medical evidence. By decision dated September 24, 1996, the Office found the evidence of record insufficient to establish that a specific event, incident or exposure occurred at the time, place, and in the manner alleged and that appellant sustained an employment-related injury.

The Board has duly reviewed the case record in the present appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury in the performance of duty on July 18, 1996.

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 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] *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 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.[4] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. He has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, his statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.[5]

The second component 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 or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[6]

Regarding the first component, appellant in this case stated in his claim form that on July 18, 1996 he injured his lower back when the forklift he was driving over railroad tracks made a sudden jolt.

In an attending physician's report (Form CA-20) dated July 23, 1996, Dr. Richard E. Wright, a chiropractor, noted that appellant felt a sudden jolt and pain in his lower back while driving a forklift four months ago and again on July 18 1996 when he was driving a forklift on a bumpy surface. Dr. Wright diagnosed "positive musculoskeletal compromise for thoraco-lumbar instability."

The Board finds that appellant's statements and Dr. Wright's report provide a consistent history of injury and that appellant obtained medical treatment within a week of the injury. Thus, the Board finds that the contemporaneous evidence of record supports that the incident occurred at the time, place and in the manner alleged.

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

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

[5] *Carmen Dickerson*, 36 ECAB 409 (1985).

[6] *John M. Tornello*, 35 ECAB 234 (1983); 20 C.F.R. § 10.11(a).

Regarding the second component, however, the Board finds that appellant has failed to establish that his back condition was caused by the July 18, 1996 incident.

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence, *i.e.*, medical evidence presenting a physician's well-reasoned opinion on how the established factor of employment caused or contributed to the claimant's diagnosed condition. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established factor of employment.[7]

In support of his claim, appellant submitted an attending physician's report (Form CA-20) dated July 23, 1994 from Dr. Wright, a chiropractor. Dr. Wright initially diagnosed thoraco-lumbar instability.

Section 8101(2) of the Act provides that the term "'physician' ... includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."[8] In order for Dr. Wright to be considered a "physician" under the Act, and therefore establish his reports as probative medical evidence, he must diagnose a subluxation as demonstrated by x-ray. Dr. Wright did not diagnose a subluxation nor indicate that x-rays were taken. Accordingly, the Board finds that Dr. Wright is not a "physician" under the Act and his reports are of no probative value to appellant's claim. Since appellant did not submit supporting medical evidence, he has not established an injury in the performance of duty on July 18, 1996.[9]

[7] *Ern Reynolds*, 45 ECAB 690 (1994); *Melvina Jackson*, 38 ECAB 443, 449 (1987); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

[8] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

[9] The Board notes that additional evidence was received by the Office subsequent to the September 24, 1996 decision. The Board further notes that on appeal, appellant submitted new evidence. The Board, however, cannot consider this evidence, inasmuch as the Board's review of the case is limited to the evidence of record which was before the Office at the time of its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office with a formal request for reconsideration; *see* 20 C.F.R. § 501.7(a).

The September 24, 1996 Office of Workers' Compensation Programs' decision is modified to find that the evidence of record [is] sufficient to establish that the incident occurred at the time, place and in the manner as alleged on July 18, 1996, and affirmed as modified.

Dated, Washington, D.C.
January 6, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member