U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH MATRANGA and U.S. POSTAL SERVICE,
VERNON HILLS POST OFFICE, Vernon Hills, Ill.

Docket No. 97-1221; Submitted on the Record;
Issued January 5, 1999

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty.

On November 27, 1995 appellant, then a bulk mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on November 13, 1995 he sustained a slipped disc when he slipped on the ice in the parking lot. Appellant stopped work on November 14, 1995 and returned to work on November 21, 1995. Appellant then stopped work during the period November 30 through December 13, 1995. Appellant returned to work on December 14, 1995.

By decision dated February 5, 1996, the Office of Workers' Compensation Programs found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In an undated letter, appellant requested reconsideration of the Office's decision accompanied by factual and medical evidence.

By decision dated May 9, 1996, the Office denied appellant's request for modification based on a merit review of the claim.[1]

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the

[1] The Board notes that subsequent to the Office's May 9, 1996 decision, it received additional medical evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

[2] 5 U.S.C. §§ 8101-8193.

individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitations 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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.[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 has alleged that he sustained a back injury when he slipped on the ice in the parking lot on November 13, 1995. Specifically, in an undated narrative statement, appellant indicated that on the date of injury, he slipped on the ice in the employee parking lot approximately between 5:15 p.m. and 5:25 p.m. while getting into his truck. Appellant stated that he was late leaving the employing establishment because a mailer from American Marketing Services and Consultants, Inc. was late bringing over a mailing statement. Appellant further stated that he did not know of anyone who witnessed his fall and that at the time of the injury he told his physician and the hospital where he sought medical treatment that he had hurt his back at work. Additionally, appellant stated that he called Michael T. Downar, appellant's supervisor, from the hospital and told him what had happened. Appellant then stated that Mr. Downar told him not to worry and that everything would be taken care of when he returned to work. Appellant stated that when Mr. Downar called him two days later to ask about his office keys, he reminded him that he had hurt himself at work and that Mr. Downar told him to not to worry about anything. Appellant also stated that later on, Mr. Downar did not remember the telephone conversations they had and that he changed things when he was told that someone had overheard their conversations. Appellant noted that as of January 29, 1996, the postmaster did not talk to him about the discrepancies and that Mr. Downar had not talked to him except to request that he fill out an accident report.

In another undated narrative statement, appellant reiterated his previous contentions. In addition, appellant stated that when he returned to work on November 21, 1995, he asked

[3] *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[5] *Elaine Pendleton*, *supra* note 3.

[6] *See John M. Tornello*, 35 ECAB 234 (1983); 20 C.F.R. § 10.110(a).

Mr. Downar twice for the paperwork. Appellant also stated that he again requested the paperwork twice on November 22 and 24, 1995.

In a December 21, 1995 letter, Mr. Downar controverted appellant's claim. Mr. Downar stated that on November 14, 1995, appellant's mother telephoned the employing establishment and reported that appellant had been taken to the hospital for a back injury. He further stated that appellant telephoned that same day and stated that he would be out of work for awhile due to his injury. Mr. Downar indicated that when appellant was questioned about the alleged injury, he merely stated that he had twisted his back on Monday, November 13, 1995 when he slipped on the ice and that he thought he would be okay after putting heat on his back. Mr. Downar stated that during a telephone conversation on November 20, 1995, appellant indicated that his injury was work related and that appellant subsequently submitted the requested documentation to complete an accident report on November 27, 1995. He noted the time appellant missed time from work and appellant's medical records. Mr. Downar also noted that the alleged incident occurred after appellant's normal tour of duty and after he had punched off the clock. He further noted that no witnesses were available and the employing establishment received delayed notification of the alleged injury as work related for a substantial period of time. Additionally, Mr. Downar noted that appellant failed to supply the employing establishment with the requested information regarding his ability to work.

An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment, may cast sufficient doubt on an employee's statements in determining whether he has established a *prima facie* case. The employee 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.[7]

The record contains the November 22, 1995 medical treatment notes of Dr. Charles R. Hinman, a Board-certified internist and appellant's treating physician. Dr. Hinman's treatment notes indicated that the purpose of appellant's visit was to "follow up: back pain." His treatment notes also indicated that appellant may have had a lumbosacral strain and that he had a herniated disc. Dr. Hinman's notes suggest that appellant previously sought medical treatment for his back pain. Further, Dr. Hinman's medical treatment notes dated December 8 and 20, 1995 indicated that appellant continued to receive medical treatment for his back condition.

The record also reveals a duty status report (Form CA-17) of a physician whose signature is illegible dated December 20, 1995 indicating that on November 13, 1995 appellant slipped on the ice and twisted his back while entering his car, and that appellant had sustained a

[7] *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

lumbosacral strain. Dr. Hinman's Form CA-17 dated January 24, 1996 also provided the same history of the November 13, 1995 incident as provided in the December 20, 1995 Form CA-17 and appellant's physical restrictions.

The record further reveals the December 29, 1995 narrative statement from Dan Van Erden, an employee of American Marketing Services and Consultants, Inc. In this statement, Mr. Van Erden indicated that he slipped on the ice in the employing establishment's parking lot on November 13, 1995 when leaving work that day. Mr. Van Erden further indicated that the purpose of his letter was to advise the employing establishment about the possible danger of the parking lot conditions and to prevent future incidents.

Although the record does not reveal that appellant did not receive contemporaneous medical treatment and that the employing establishment received delayed notification of the November 13, 1995 incident, Dr. Hinman's medical treatment notes and medical report, the illegible Form CA-17 dated December 20, 1995 and Mr. Van Erden's December 29, 1995 statement provide a consistent history of injury. Therefore, the Board finds that the evidence of record supports that the incident occurred at the time, place and in the manner alleged.[8]

Regarding the second component, however, the Board finds that appellant has failed to establish that his back condition was caused by factors of his federal employment.

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.[9]

In this case, appellant has failed to submit rationalized medical evidence establishing that his back condition was caused by factors of his employment. Although Dr. Hinman's November 22, 1995 medical treatment notes revealed that appellant had a herniated disc and possibly a lumbosacral strain, and his December 8 and 20, 1995 and January 24, 1996 medical treatment notes indicated that appellant had a lumbosacral strain, they failed to address how and why appellant's back conditions were caused by factors of his federal employment. Therefore, they are insufficient to establish appellant's burden.

Dr. Hinman's undated medical treatment notes and his notes dated December 1, 1995 regarding the treatment of appellant's back condition, as well as, his January 24, 1996 Form CA-17 revealing a history of the November 13, 1995 employment incident and appellant's physical restrictions are insufficient to establish appellant's burden because they did not provide

[8] *Constance G. Patterson*, 41 ECAB 206 (1989); *Julie B. Hawkins*, 38 ECAB 393 (1987).

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

a diagnosis and failed to address how or why appellant's back condition was caused by factors of his federal employment.

Dr. Hinman's December 13, 1995 disability certificate revealed that appellant could return to work on December 14, 1995. This disability certificate is insufficient to establish appellant's burden because it failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by factors of his employment.[10]

Inasmuch as appellant has failed to submit rationalized medical evidence to establish that his back injury was caused by factors of his employment, the Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty on November 13, 1995.

The May 9, 1996 decision of the Office of Workers' Compensation Programs is hereby reversed in part with regard to the finding that the evidence of record was insufficient to establish that the incident occurred at the time, place and in the manner alleged and affirmed in part, with regard to the finding that appellant failed to establish that he sustained an employment-related injury on November 13, 1995.

Dated, Washington, D.C.
January 5, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[10] *Daniel Deparini*, 44 ECAB 657, 659 (1993).