U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRIAN J. McMILLION and DEPARTMENT OF VETERANS AFFAIRS, SAN DIEGO VETERANS HOSPITAL, San Diego, Calif.

Docket No. 97-1865; Submitted on the Record; Issued March 4, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, WILLIE T.C. THOMAS

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury right to his foot as alleged.

On October 28, 1995 appellant, then a 27-year-old medical instrument technician, filed a notice of traumatic injury and claim, alleging that he had sustained a fracture of the right fifth metatarsal on October 27, 1995 when he inverted his right foot on the stairs. Appellant stopped work on October 28, 1995. By letter dated December 31, 1996, the Office of Workers' Compensation Programs advised appellant that it had originally reviewed his case as a "simple uncontroverted case which resulted in minimal or no time loss from work," and therefore allowed medical payments up to $1,500.00. The Office indicated that since appellant's medical bills now exceeded $1,500.00, his claim would have to be formally adjudicated. The Office requested additional information, including a rationalized medical report which included a history of injury, examination findings, tests results, treatment history, and an opinion addressing the relationship of the diagnosed condition to the claimed factor of federal employment. By decision dated February 6, 1997, the Office denied appellant's claim on the grounds that fact of injury was not established as there was no medical evidence demonstrating a medical condition.

On appeal, appellant submitted the medical evidence requested by the Office which was date stamped February 14, 1997, eight days following the denial of his claim. Appellant stated:

> "The U.S. Department of labor waited 13 months to write me a letter, another month to send that letter, and then demanded information 14 months old within 30 days. In these busy times this request was next to impossible. Initially when I asked Kaiser for the information about my injury, including the CA-20, they informed me it was not necessary because they had already been paid. This is confusing for myself as a claimant. Enclosed are documentation from Kaiser and the Department of Veterans Affairs."

The Board has duly reviewed the case record on appeal and finds that appellant has not established that an injury was sustained as alleged on October 27, 1995

A person who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.[2] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.[3] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[6]

In the present case, the Office accepted that an incident occurred at the time, place and in the manner alleged, but denied the claim as the medical evidence did not establish that an injury occurred. A review of the record indicates that appellant did not submit any factual or medical evidence in response to the Office's December 31, 1996 request within the time specified for further information.[7] Therefore, appellant has not presented any evidence to discharge his burden of proof to establish that he sustained an injury to his right foot as alleged.

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a)

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.(2)(a) (June 1995).

[4] *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[5] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[6] *Manuel Garcia*, 37 ECAB 767 (1986).

[7] A review of the record indicates that appellant submitted evidence subsequent to the issuance of the Office's February 6, 1997 decision. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider this evidence. 20 C.F.R. § 501.2(c). Appellant may submit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a); *see generally Donna K. Schuler* 38 ECAB 273 (1986).

The decision of the Office of Workers' Compensation Programs dated February 6, 1997 is hereby affirmed.

Dated, Washington, D.C.
March 4, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member