U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KARL BROWN and DEPARTMENT OF THE ARMY, CORPS OF ENGINEERS, Vicksburg, Miss.

Docket No. 97-1892; Submitted on the Record;
Issued March 26, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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

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

Appellant filed a claim on December 19, 1995 alleging on August 23, 1995 he sustained injury to his back, legs and head in the performance of duty. By decision dated May 8, 1996, the Office of Workers' Compensation Programs denied appellant's claim finding that he failed to submit sufficient evidence to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act 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 and/or specific condition for which compensation is claimed is causally related to the employment injury."[1] 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.[2]

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.

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[1] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[2] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[4] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[5] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[6]

In this case, the Office found that appellant had not established that the employment incident occurred as alleged. The Office noted that appellant delayed in reporting his claim for four months and that he failed to submit witness statements. However, the Board notes that appellant has presented a consistent history of injury on his claim form and to his attending physician. Therefore, the Board finds that appellant has established that the employment incident occurred as alleged.

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.[7]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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 specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

In support of his claim for a back injury, appellant submitted a report dated February 19, 1996 from Dr. Douglas C. Brown, a Board-certified orthopedic surgeon. Dr. Brown noted appellant's preexisting back condition and further stated that appellant injured his back on August 23, 1995 when he was thrown down with cables on the bank of a river. He noted that

[3] *Elaine Pendleton, supra* note 1.

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[6] *Id.* at 255-56.

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

[8] *James Mack*, 43 ECAB 321 (1991).

appellant's magnetic resonance imaging scan demonstrated protruding discs. Dr. Brown diagnosed chronic lumbar disc syndrome. This report is not sufficient to meet appellant's burden of proof as he did not provide an opinion on the causal relationship between appellant's accepted employment incident and his diagnosed condition.

The remainder of the medical evidence in the record does not address appellant's history of injury and does not provide an opinion on the causal relationship between that injury and his diagnosed conditions.[9] As appellant has failed to submit the necessary medical evidence to meet his burden of proof, the Office properly denied his claim.

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

Dated, Washington, D.C.
March 26, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[9] Following the Office's May 8, 1996 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).