U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LACAYO SAMUEL and DEPARTMENT OF THE NAVY, LONG BEACH NAVAL SHIPYARD, Long Beach, Calif.

Docket No. 97-2176; Submitted on the Record;
Issued May 24, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, DAVID S. GERSON

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on October 9, 1996, as alleged.

On October 10, 1996 appellant, then a 62-year-old file clerk, filed a notice of traumatic injury (Form CA-1) alleging that he suffered a low back injury while being transported to a work site in a club car driven by his supervisor. On the reverse side of the form, appellant's supervisor controverted appellant's claim stating that he disagreed with appellant's statements of the facts about the injury and "[e]mployee sustained no injury to the best of my knowledge." It was also indicated that appellant did not stop work.

Accompanying appellant's claim was an October 10, 1996 statement by appellant's supervisor in further support of the employing establishment's controversion of the claim; employing establishment health records indicating that on his second visit that day appellant related that "he was forced to ride in a government golf cart which caused him back pain on October 9, 1996 with numbness down his left leg. This was due to the metal bar on the seat back hitting him across the back and riding over all the bumps in the street, while driving approximately 1/4 mile" and that on October 15, 1996 he was seen for certification to return to work which his doctor released him to regular work with no heavy shoes if not in hazardous area; an October 10, 1996 status report from Downey Community hospital by a doctor whose signature is illegible indicating appellant was returned to regular work and discharged; an October 16, 1996 status report from Downey Community also by a doctor whose signature is illegible indicating appellant was released to modified work with no lifting over 20 pounds; and an October 17, 1996 letter from the employing establishment continuing its controversion of appellant's claim.

On October 24, 1996 the record was supplemented with an October 10, 1996 report by Dr. Mertin Orens, who saw appellant on that day, and gave a history of complaints of back pain and stated:

> "[Appellant] states that while he was at work, his foreman required him to wear heavy steel shoes and he states that this was causing an old back injury to flare-up. He states that while he was wearing the shoes, he was required to ride in a bumpy cart and this as well caused an inflammation of his old back injury."

Dr. Oren diagnosed acute minor lumbosacral strain, which was treated with Motrin. Appellant was returned to regular duty with no wearing of heavy shoes as long as he is not in a hazardous area. Appellant was then discharged from his care.

On November 13, 1996 the record was supplemented with a November 4, 1996 letter from the employing establishment further controverting appellant's claim; employing establishment pictures of the club car and route taken by appellant; statements by two witnesses who also rode in the club car and appellant's supervisor's statement; and health plan notes indicating that appellant was referred for physical therapy for two weeks.

By decision dated November 18, 1996, the Office of Workers' Compensation Programs found that there were inconsistencies which cast doubt on the validity of appellant's claim. Therefore, fact of injury was not established.

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on October 9, 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 filed within the applicable time limitations of the Act.[2] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,[3] that the injury was sustained while in the performance of duty[4] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[5] 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.[6]

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Robert A. Gregory*, 40 ECAB 478 (1989).

[4] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *Steven R. Piper*, 39 ECAB 312 (1987).

[6] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In a traumatic injury case, the employee must establish by the weight of reliable, probative and substantial evidence that the occurrence of an injury is in the performance of duty at the time, place and in the manner alleged and that the injury resulted from a specific event or incident.[7] The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[8]

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. In this case, the Office found that there were such inconsistencies in the evidence to case doubt that the incident occurred as alleged. Appellant has consistently maintained that on October 9, 1996 he was directed to get in a club car to be transported to another work location by his supervisor. This was corroborated by his supervisor and witnesses. Therefore, there is no dispute that on October 9, 1996 appellant did ride in a club car as instructed. Consequently, the Board finds that appellant has established that the actual incident of riding in a club car occurred on October 9, 1996, as alleged. However, the Board also finds that there are discrepancies in appellant's description of the circumstances surrounding the ride. Appellant has alleged that the road was bumpy, while his supervisor and witnesses stated that it was a smooth, comfortable ride. The employing establishment provided pictures of the route taken which showed a rather smooth paved road. Appellant alleged that a metal bar on the seat back hit him across the back, but he never mentioned it to anyone on the car or indicated to anyone that he was injured. Appellant also stated that he was wearing heavy steel shoes, but his supervisor stated that he was being transported to an area where the shoes were not required because he was not wearing them. In light of this, the Board finds that there are sufficient discrepancies in appellant's description of the circumstances surrounding the incident to cast doubt on the validity of appellant's allegations on the nature of the incident.

The second component of fact of injury 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.[9]

In this case there is no rationalized medical opinion evidence based on a complete and accurate factual and medical background supporting that the October 9, 1996 employment incident resulted in a personal injury. In the October 10, 1996 health unit records, appellant related that while riding in a club car on October 9, 1996 the metal bar on the seat back hit him across the back causing his back pain. In an October 10, 1996 report by Dr. Orens, appellant gave a history of wearing heavy steel shoes and riding in a bumpy car as causing a flare-up of an

[7] *See Joshua Fink*, 35 ECAB 822, 823-24 (1984).

[8] *Eric J. Koke*, 43 ECAB 638 (1992); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

[9] *Kathryn Haggerty*, 45 ECAB 383 (1994); *see* 20 C.F.R. § 10.110(a).

old back injury. The health unit records failed to provide a diagnosis or to causally relate a specific condition to the October 9, 1996 incident. Dr. Orens diagnosed acute minor lumbosacral strain and stated that his diagnosis is consistent with appellant's account of the injury. However, his opinion was based on an inaccurate factual background.[10] Therefore, neither the health unit records nor Dr. Orens' October 10, 1996 report are sufficient to establish appellant's claim.

In view of the inconsistencies in appellant's statements regarding the nature of the incident and the lack of rationalized medical opinion evidence, the Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury to his back in the performance of duty on October 9, 1996, as alleged.

The decision of the Office of Workers' Compensation Programs dated November 18, 1996 is affirmed as modified.[11]

Dated, Washington, D.C.
May 24, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

[10] *Gary L. Fowler*, 45 ECAB 365 (1994) (where the Board found that the opinion of the physician must be based on a complete factual and medical background of the claimant and 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).

[11] The Board notes that subsequent to the issuance of the Office's decision and on appeal, appellant submitted evidence which was not previously before the Office. As this evidence was not previously submitted to the Office for consideration prior to its decision of November 18, 1996, the evidence represents new evidence which cannot be considered by the Board. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c). Appellant may resubmit this evidence to the Office, together with a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b).