U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RECTO Q. LEE and U.S. POSTAL SERVICE,
POST OFFICE, San Jose, CA

Docket No. 98-1493; Submitted on the Record;
Issued November 19, 1999

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a right elbow condition in the performance of duty, causally related to factors of his federal employment.

On November 10, 1997 appellant, then a 42-year-old mailhandler, filed a claim alleging that for four and one half years he had been having problems pushing the equipment and had so advised his supervisor, Soni Singal. Appellant noted the nature of illness as "hurt my elbow (right)" and indicated that he first became aware of the condition on October 29, 1997, but that he first realized that the condition was caused or aggravated by his employment in "January 1997."

By letter dated November 21, 1997, the Office of Workers' Compensation Programs requested further information including a description of the specific employment activities implicated in the development of appellant's condition and a comprehensive medical report from his treating physician discussing causal relationship of his condition with the specific activities of appellant's employment.

No further factual information was submitted by appellant.

However, treatment evidence from a physician's assistant and a physical therapist were submitted. Additionally, medical evidence was submitted dated November 7, 1997 from a physician whose signature is illegible. In a November 7, 1997 industrial treatment report, the date of injury was noted as October 29, 1997; for the diagnosis the physician checked the box labeled "strain" and wrote in [right] elbow and he indicated that appellant could return to work on November 7, 1997 with restrictions on repeated right elbow bending. On the second page of the report the physician noted no instability or significant tenderness and he recommended continuation of physical therapy. No employment relationship was identified.

By decision dated December 23, 1997, the Office rejected appellant's injury claim finding that he had not established that he sustained an injury as alleged. The Office discussed appellant's burden of proof to establish fact of injury and then found that appellant implicated no duties or employment factors to which he attributed his condition, stating only that he was "pushing equipment."

The Board finds that appellant has failed to establish that he sustained a right elbow condition in the performance of duty, causally related to factors of his federal employment.

An employee seeking 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 in the performance of duty as alleged.[2] In cases of occupational disease or illness, an employee must establish fact of injury by submitting medical evidence establishing that conditions or factors of employment caused an "injury" as defined in the Act and its regulations.[3]

In other words, appellant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4]

In this case, appellant failed to identify any specific employment factors which he implicated in the causation of his right elbow condition. Therefore, he has failed to submit sufficient factual evidence to meet his burden of proof to establish the employment relatedness of his claim.

Further, the medical evidence submitted in this case is insufficiently probative to establish his claim. The reports from the physician's assistant and the physical therapist are not considered to be probative medical evidence under the Act.[5] Additionally, the November 7,

---

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Cf. Frederick H. Coward, Jr.*, 41 ECAB 843 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989) (the employee must submit, among other things, medical evidence establishing that the employment factors indentified by the employee proximately caused the condition for which compensation is claimed). 5 U.S.C. § 8101(1)(5) defines "injury" in relevant part as follows: "`injury' includes, in addition to injury by accident, a disease proximately caused by employment...." 20 C.F.R. § 10.5(a)(16) defines "occupational disease or illness" as follows: "[A] condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates or radiation or other continued or repeated conditions or factors of the work environment."

[4] *Judith A. Peot*, 46 ECAB 1036 (1995); *Jerry D. Osterman*, 46 ECAB 500 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

[5] *See Shiela A. Johnson*, 46 ECAB 323 (1994); *Shiela Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992);

1997 report is from a physician whose signature is illegible and hence his/her identity and specialty are indeterminable; he/she merely provides a check mark for a diagnosis and provides no history of injury or description of development of the condition, beyond noting a "date of injury" of October 29, 1997. This physician provides no discussion of causal relation whatsoever and gives no evidence of knowledge or understanding of any factors of appellant's employment. Consequently, this report is of diminished probative value and is wholly insufficient to establish appellant's claim.[6]

Accordingly, the decision of the Office of Workers' Compensation Programs dated December 23, 1997 is hereby affirmed.

Dated, Washington, D.C.
November 19, 1999

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Barbara J. Williams 40 ECAB 649 (1989) (physician's assistants and physical therapists are not competent to render medical opinions).

[6] *See Barbara J. Williams supra* note 5; *Mary S. Brock*, 40 ECAB 461 (1989); *John A. Ceresoli*, 40 ECAB 305 (1988).