U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL L. CANARIS and DEPARTMENT OF LABOR, OFFICE OF INSPECTOR GENERAL, Washington, DC

Docket No. 97-2823; Submitted on the Record;
Issued October 19, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a neck or right upper extremity injury in the performance of duty on May 1, 1996.

The Board finds that appellant did not meet his burden of proof to establish that he sustained a neck or right upper extremity injury in the performance of duty on May 1, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[4] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[6]

An employee who claims benefits under the Act has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[7] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.[8] An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[9] 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[10] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[11]

In the present case, appellant alleged that he sustained neck and right upper extremity injuries at work on May 1, 1996. Regarding the cause of the injury, appellant stated, "Reinjury of original injury on March 29, 1995, unloading equipment, pulled nerve and muscle in neck."[12] Appellant indicated that the equipment he unloaded from a vehicle weighed 50 pounds. By decision dated January 23, 1997, the Office denied appellant's claim on the grounds that he did not establish the occurrence of the May 1, 1996 employment incident. By decisions dated March 31 and June 26, 1997, the Office denied modification of its January 23, 1997 decision.

The Board notes that appellant has established the occurrence of an employment incident on May 1, 1996. Appellant consistently indicated that he sustained neck and right upper extremity injuries at work on May 1, 1996 when he was unloading equipment weighing

[5] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

[7] *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[8] *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

[9] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[10] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[11] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

[12] Appellant had previously sustained an employment-related neck strain on March 29, 1995 due to lifting heavy equipment from a vehicle. Appellant did not stop work due to this injury.

50 pounds from a vehicle. The record does not contain any strong or persuasive evidence which would refute appellant's account of the May 1, 1996 incident. The Board further notes, however, that appellant did not submit sufficient medical evidence to establish that he sustained an employment-related injury on May 1, 1996.

Appellant submitted a May 2, 1996 report in which Dr. Mark I. Ellen, an attending Board-certified orthopedic surgeon, indicated that he reported he felt sharp pain in his right shoulder when he "was coming out" of his car at work on May 1, 1996.[13] Dr. Ellen diagnosed scapular winging probably secondary to long thoracic nerve injury, secondary impingement of his right shoulder and secondary myofascial tender points. This report, however, is of limited probative value on the relevant issue of the present case in that it does not contain a clear opinion on the cause of appellant's condition.[14] Dr. Ellen's opinion is of limited probative value for the further reason that it is not based on a complete and accurate factual and medical history.[15] The description of the May 1, 1996 incident in this report is not in accord with the employment-related lifting of equipment which has been accepted as occurring on that date.

The record also contains reports dated May 20, September 6 and October 21, 1996, in which Dr. Ellen listed the date of injury as May 1, 1996 and described appellant's neck and right shoulder condition. In a report dated April 30, 1997, Dr. Ellen diagnosed axonotmesis of the long thoracic nerve of appellant's right shoulder and stated, "In fact, the patient did suffer a new injury which should be 100 [percent] work-related beginning on May 1, 1996." These reports, however, are of limited probative value on the relevant issue of the present case in that they do not contain adequate medical rationale in support of their opinions on causal relationship.[16] Dr. Ellen did not provide any description of the May 1, 1996 incident or explain the medical process by which it could have caused appellant's claimed neck and right shoulder injury.

[13] Dr. Ellen indicated that appellant denied "any new trauma or any other difficulties."

[14] *See Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[15] *See William Nimitz, Jr.*, 30 ECAB 567, 570 (1979) (finding that a medical opinion on causal relationship must be based on a complete and accurate factual and medical history).

[16] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

The decisions of the Office of Workers' Compensation Programs dated June 26, March 31 and January 23, 1997 are affirmed as modified to reflect the acceptance of the occurrence of the May 1, 1996 employment incident.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member