U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY A. LEFEVER and U.S. POSTAL SERVICE,
POST OFFICE, San Antonio, TX

Docket No. 98-749; Submitted on the Record;
Issued October 14, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

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

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

On May 15, 1997 appellant, then a 42-year-old rural letter carrier, filed a claim for compensation alleging that on May 14, 1997 she injured the top of her right foot while delivering mail when "going to step on the brake pedal" she indicated that the pain lasted about 30 minutes and that it started to hurt again after walking. The Office of Workers' Compensation Programs denied appellant's claim by decision dated December 1, 1997 finding that she failed to establish fact of injury.[1]

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 are causally related to the employment injury."[2] 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.[3]

[1] The Board notes that subsequent to the Office's December 1, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

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

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

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.[4] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] 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.[6] 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.[7]

In this case, the Office questioned whether the employment incident occurred as alleged. Although appellant stated that she injured her right foot while delivering a parcel when "going to step on the brake pedal," the employing establishment controverted the claim, noting that appellant stated that she "could not remember striking it anywhere," and that she "did not know where she injured it." However, appellant essentially described the same history of injury in a CA-16, authorization for treatment and examination, in which she stated that "top of right foot began hurting while driving a route after delivering parcel…."[8] Dr. Johnson, the employing establishment referral physician, stated in a May 15, 1997 duty status report that the history of injury as related by appellant, that she injured the top of her right foot, corresponded to the history of the injury as recorded in the supervisor's section of the duty status report.[9] Given the consistent history of the incident as reported by appellant in her claim form and in her request for medical treatment, 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.[10]

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[4] *Elaine Pendleton*, *supra* note 2.

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

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

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

[8] Dr. Johnson noted in the CA-16 that "no activity described that started pain."

[9] In a May 27, 1997 duty status report, the employing establishment described appellant's injury as "Unknown -- pain on the top of the right foot."

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

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.[11]

In this case, the medical evidence included medical reports from Dr. Keith Johnson, an employing establishment referral physician and Board-certified in emergency medicine, who examined appellant on May 15, 20 and 30, 1997 and stated in each report that appellant had right ankle sprain but that she could return to regular duty on the day of the examination without restriction.[12] The physician did not provide an opinion on the causal relationship between appellant's diagnosed condition and her accepted employment incident and thus these reports are not sufficient to meet appellant's burden of proof.

The Office requested additional factual and medical evidence from appellant by letter dated November 7, 1997. There is no additional evidence included in the record prior to the Office's December 1, 1997 decision. As appellant failed to submit the necessary medical opinion evidence, she failed to meet her burden of proof and the Office properly denied her claim.

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

[12] The evidence of file also included a May 28, 1997 right ankle magnetic resonance imaging (MRI) scan which was read by Dr. James S. Gilley, who stated that it revealed "moderate talonavicular joint effusion with mild dorsal spurring suggesting early arthritic change, and [three] to [four] millimeters early subcortical cyst formation in the medial dome of talus. Question significance."

The decision of the Office of Workers' Compensation Programs dated December 1, 1997 is hereby affirmed.

Dated, Washington, D.C.
October 14, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member