U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DON R. SPRY, II and DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS SERVICES CENTER, Battle Creek, MI

Docket No. 98-1312; Submitted on the Record;
Issued October 1, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained a back injury on July 12, 1997 as alleged.

On October 10, 1997 appellant, then a 40-year-old marketing specialist, filed a notice of traumatic injury and claim alleging that, on July 1, 1997, he sustained a back injury due to an automobile accident while en route to Washington, D.C. for a work-related conference.[1] In a decision dated January 16, 1998, the Office denied appellant's claim on the grounds that fact of injury was not established.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that he sustained a back injury as alleged.

A person who claims benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.[3] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure

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[1] A review of the record reveals that the Office of Workers' Compensation Programs doubled the claim at issue herein with another traumatic injury claim filed by appellant on February 24, 1997 for an alleged employment injury of January 18, 1997. The record does not contain any decision concerning appellant's February 1997 claim.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

which is alleged to have occurred.[4] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[5] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[6] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[7]

In the present case, appellant submitted sufficient factual information to establish that he was involved in an automobile accident on July 12, 1997 at the time, place and in the manner alleged. This is uncontested on appeal. Therefore, the only issue is whether appellant established that he sustained an injury as a result of the employment incident. Although, in a letter dated December 11, 1997, the Office requested that appellant submit medical evidence to establish that he sustained a personal injury as a result of the July 12, 1997 accident, appellant did not submit any medical evidence.[8] As the record is devoid of any medical evidence to establish that appellant sustained a personal injury on July 12, 1997, the second prong of the fact of injury test has not been established. Appellant has not met his burden of proof.

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.(2)(a) (June 1995).

[5] *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[6] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[7] *Manuel Garcia*, 37 ECAB 767 (1986).

[8] Subsequent to the issuance of the January 16, 1998 decision, appellant attempted to submit additional evidence in support of his claim. The Board's review is limited to the evidence that was before the Office at the time of its final decision. The Board therefore cannot consider this evidence. Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated January 16, 1998 is hereby affirmed.

Dated, Washington, D.C.
October 1, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member