U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ENID ORTIZ and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

Docket No. 99-2461; Submitted on the Record;
Issued December 6, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On May 25, 1999 appellant, then a 36-year-old letter carrier, filed a notice of traumatic injury, Form CA-1, alleging that on April 27, 1999, while attempting to roll down a truck window, she got her arm caught between the door and a tray, and injured her elbow. On the reverse of the form, her supervisor indicated that appellant had not stopped working. An accompanying undated narrative statement from appellant reported a history of injury consistent with that stated on the CA-1 form.

Evidence of record includes a report from Concentra Medical Center, dated May 25, 1999, which noted pain and a contusion in the right elbow area.[1] The physician noted a history of injury similar to that stated on appellant's May 25, 1999 CA-1 form. Additional evidence includes a work restriction form, apparently from the same physician, dated May 25, 1999. This form notes pain and tenderness around appellant's right elbow, however, it also notes that appellant is able to perform her regular duties with no restrictions.

By letter dated June 15, 1999, the Office of Workers' Compensation Programs advised appellant that the information submitted in her claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act.[2] Further, the Office advised appellant of the additional medical and factual evidence needed to support her claim. In particular, appellant was advised to provide a physician's opinion, with medical reasons for such opinion, as to how the work incident caused or aggravated the claimed injury.

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[1] The physician's signature is illegible.

[2] 5 U.S.C. §§ 8101-8103.

Additionally, the Office forwarded questions regarding the alleged incident, which appellant was to respond to.

In response to the Office's June 15, 1999 letter, appellant forwarded a report from a physical therapy appointment, dated May 25, 1999.[3] This report also noted a history of injury consistent with that stated on appellant's May 25, 1999 CA-1 form.

By decision dated July 15, 1999, the Office denied appellant's claim. The Office found that appellant failed to submit sufficient evidence regarding the circumstances of her claimed injury. The Office concluded that appellant has not established that claimed incident was sustained on April 27, 1999, as alleged.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty, as alleged.

An employee seeking benefits under the Act has the burden of establishing that 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of the duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.[4] These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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.[6] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] 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.[8] A consistent history of the injury as

[3] The physical therapist's signature is illegible.

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

[5] *Daniel J. Overfield*, 42 ECAB 718, 721(1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

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

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

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.[9]

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]

In this case, the Office denied the claim on the grounds that the first component, the alleged incident of April 27, 1999, did not occur as alleged. However, the Board finds that appellant's statements regarding the claimed incident are uncontroverted and are consistent with the history of injury noted in the medical and physical therapy reports. There is no contemporaneous factual evidence indicating that the claimed incident did not occur. Therefore, the Board finds that the evidence established that the claimed April 27, 1999 incident occurred as alleged such that the Board must next consider whether the medical evidence established a causal relationship between the incident and the claimed injury.

The medical evidence, from a physician whose signature is illegible diagnosed a contusion on the right elbow. However, the physician did not specifically state an opinion regarding whether the incident caused an injury to appellant's right elbow on April 27, 1999. On June 15, 1999 the Office advised appellant of the type of medical and factual evidence needed to establish her claim. The only additional evidence submitted prior to the Office's July 15, 1999 decision[11] consists of a physical therapist's report.[12]

As noted above, part of appellant's burden of proof includes the submission of probative medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, she has not met her burden of proof in establishing her claim.

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

[10] *See* 20 C.F.R. § 10.115(a)(1999); *Kathryn Haggerty*, 45 ECAB 383 (1994); *John M. Tornello*, 35 ECAB 234 (1983).

[11] In appellant's August 4, 1999 application for review to the Board, she submitted factual and medical evidence. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.

[12] A physical therapist is not considered to be a physician under the provisions of the Act, and is not competent to render a medical opinion; therefore, the May 25, 1999 report is of no probative value. *See* 20 C.F.R. § 8101(2); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

The decision of the Office of Workers' Compensation Programs dated July 15, 1999 is hereby affirmed as modified.

Dated, Washington, DC
December 6, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member