U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NELSON GRANT and U.S. POSTAL SERVICE,
POST OFFICE, Tavares, FL

Docket No. 98-460; Submitted on the Record;
Issued January 27, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that this case is not in posture for decision.

On March 17, 1997 appellant, then a 45-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he experienced pain in his right shoulder after winding down the window of a "LLV" to deliver mail to a mailbox. Appellant stopped work on that date and has not returned to work.

By letter dated March 28, 1997, the Office of Workers' Compensation Programs advised appellant that the factual evidence submitted was insufficient to establish his claim. The Office then advised appellant to submit medical evidence supportive of his claim within 30 days.

By decision dated April 28, 1997, the Office found that appellant had actually experienced the incident as alleged, but found that appellant had failed to submit any medical evidence to establish that he sustained an injury caused by the employment incident. In an August 26, 1997 letter, appellant requested reconsideration of the Office's decision accompanied by medical evidence.

By decision dated September 22, 1997, the Office denied appellant's request for modification based on a merit review of the claim.[1]

[1] The Board notes that, subsequent to the Office's September 22, 1997 decision denying appellant's request for modification, the Office received additional evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 timely filed within the applicable time limitations 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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.[5] In the present case, the Office accepted that appellant actually experienced the incident as alleged. The Board finds that the evidence of record supports this incident.

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.[6] In the instant case, appellant has submitted medical evidence sufficient to warrant further development of the record.

In support of his claim, appellant submitted the March 17, 1997 medical treatment notes of Dr. John L. Geeslin, a Board-certified family practitioner, a specialist in emergency medicine and his treating physician. In these treatment notes, Dr. Geeslin indicated a history of the March 17, 1997 employment incident. He further indicated appellant's complaints of pain anterior and lateral to the acromioclavicular joint, and when he attempted to rotate or elevate his right shoulder. Dr. Geeslin agreed with appellant noting that appellant resisted any attempts to externally or internally rotate or to abduct greater than 40 degrees. He further noted that pulses were normal distally as was the neurologic examination. On x-ray examination, Dr. Geeslin stated that there was some widening of the joint space, but not enough to call a dislocation. He further stated that appellant's shoulder injury may be nothing more than either a pinched tendon and/or broken blood vessels causing rapidly expanding hematoma or a subtle dislocation. Dr. Geeslin then noted that he referred appellant to the emergency room for a proper x-ray evaluation and treatment.

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[2] 5 U.S.C. §§ 8101-8193.

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

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

[5] *Elaine Pendleton*, *supra* note 3.

[6] 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

In further support of his claim, appellant submitted Dr. Geeslin's June 26, 1997 medical report reiterating the history of the March 17, 1997 employment incident, appellant's complaints, his x-ray findings and appellant's subsequent referral for an x-ray examination as provided in his March 17, 1997 treatment notes. Dr. Geeslin concluded that "I feel the motions described by the [appellant] were definitely consistent with his injury and was work related."

The Board finds that, although Dr. Geeslin's medical treatment notes and report do not constitute rationalized medical evidence, they are sufficient to require further development of the medical evidence based on the medical treatment appellant received, the x-ray results and appellant's inability to use his right shoulder.[7] On remand, the Office should require appellant to submit the emergency room medical records. Further, the Office should prepare a statement of accepted facts and refer appellant along with the factual and medical record to an appropriate second opinion physician to submit a rationalized medical opinion addressing whether appellant sustained an injury due to the March 17, 1997 employment incident, and if so, the nature of the injury sustained, the treatment required and the period or periods of disability for work.

The September 22 and April 28, 1997 decisions of the Office of Workers' Compensation Programs are hereby set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, D.C.
January 27, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] *See John J. Carlone*, 41 ECAB 354, 358 (1989).