U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AVELINA CABANTING and DEPARTMENT OF DEFENSE, DEFENSE SUPPLY CENTER RICHMOND, Richmond, VA

Docket No. 98-1729; Submitted on the Record;
Issued January 12, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS, 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 on July 2, 1997, as alleged.

The Board has reviewed the case record in the present appeal and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on July 2, 1997, as alleged.

On November 13, 1997 appellant, a 60-year-old sale store checker, filed a claim for a traumatic injury (Form CA-1) alleging that on July 2, 1997 the following occurred: "since I had surgery on left wrist, I have to use my right hand more often causing pain and discomfort. I was not injured." Appellant missed no time from work.

By decision dated March 30, 1998, the Office denied her claim, finding that as the evidence she submitted was insufficient "to meet the guidelines" for establishing that she sustained an injury on July 2, 1997 within the meaning of the Federal Employees' Compensation Act,[1] as alleged, she failed to establish fact of injury.

An employee seeking benefits under the 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 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]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).

In support of her claim, appellant submitted a medical note from a physician with the typed initials "ELH" from Orthopaedic Specialists of Charleston, dated December 11, 1997. The note revealed that, although appellant continued to experience pain about the right wrist, the injection administered to her improved her symptoms. Physical examination revealed a positive Finkelstein test and tenderness about the first dorsal compartment of the right wrist. The physician referred her to an orthoplast to fit her for a splint to protect her thumb, which he instructed her to wear at work. The physician placed no other limitations on her activities. The Board notes that the medical note was not signed by a physician, thereby reducing its competency, as any medical evidence which the Office relies upon to resolve an issue must be in writing[3] and signed by a qualified physician.[4] Additionally, the medical note was devoid of any history of injury or description of employment factors which appellant was to avoid, a diagnosis and a rationalized medical opinion relating the diagnosed condition to appellant's employment. As such, the medical note was insufficient to establish causal relationship.[5]

In a January 28, 1998 letter, the Office advised appellant that the documents she submitted were insufficient to establish her claim for a wrist condition and requested that she provide factual and medical evidence supportive of her claim. Among other things, the Office requested either a description of an injury to which she attributed her wrist condition, or a description of the employment factors in her capacity as a sale store checker to which she attributed the condition. The Office allotted appellant 30 days within which to provide the requested information. Appellant did not respond within the time allotted.

Appellant has not submitted any evidence, factual or medical, to establish that she sustained an injury/condition to her right hand in the performance of duty on July 2, 1997, as alleged. Moreover, appellant did not provide an explanation as to what she meant by her statement on the claim form that she did not injure herself on July 2, 1997 but began using her right hand more following surgical intervention of the left hand to compensate. As such, she has failed to meet her burden of proof and the Office properly denied her claim.

[3] *James A. Long*, 40 ECAB 538, 541 (1989); *Walter A. Fundinger, Jr.*, 37 ECAB 200, 204 (1985).

[4] *James A. Long*, *supra* note 3.

[5] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989) (medical certificates do not constitute competent medical opinion evidence).

The decision of the Office of Workers' Compensation Programs dated March 30, 1998 is hereby affirmed.[6]

Dated, Washington, D.C.
January 12, 2000

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[6] On appeal, appellant submitted new medical evidence which was not before the Office at the time it issued its March 30, 1998. The Board cannot for the first time on appeal review such evidence; *see* 20 C.F.R. § 501.2(c). Appellant may submit this evidence to the Jacksonville, Florida district office, together, with a formal written request for reconsideration pursuant to section 10.606 of the Office's procedures (20 C.F.R. § 10.606).