U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN L. HALE and DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS, ENVIRONMENTAL LABORATORY, Hubbardston, MA

Docket No. 98-1795; Submitted on the Record;
Issued March 6, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON, BRADLEY T. KNOTT

The issue is whether appellant established that she sustained an injury in the performance of duty on February 25, 1997.

On February 27, 1997 appellant, then a 55-year-old technician, filed a notice of traumatic injury and claim for compensation alleging that on February 25, 1997 she handled materials at work which possibly caused a rash and swelling around her left eye. She noted on her CA-1 form that she initially thought she was allergic to a drug she administered to her pets, but that her veterinarian and health provider advised her that the drug would not have caused her facial condition. Appellant's supervisor noted on the reverse side of the CA-1 form "possible exposure when washing empty coolers on February 20, 1997 from union river dump site and Fisherville Pond Blackstone River." Appellant did not miss any work and seeks reimbursement for her medical expenses.

In a CA-16 form dated February 27, 1997, Dr. Paul Willis, an emergency room physician, noted that appellant came to the emergency room on that date with pruritis and redness around her left eye. Dr. Willis diagnosed clinical dermatitis of unknown origin and prescribed medication and cool compresses. He referred appellant to Dr. Laura Bissette, a Board-certified dermatologist, for follow-up care.

In a report dated February 28, 1997, Dr. Bissette stated that appellant presented with a pruritic rash and swelling around the left eye, which had worsened since appellant's initial emergency room treatment. She noted that there were a number of possible contact agents including Clindamycin eye drops and exposure to bacterial or chemical contaminants at work. Dr. Bissette reported physical findings and diagnosed "left periorbital contact dermatitis."

An investigative report prepared by the employing establishment on April 10, 1997 indicated that appellant was attempting to clean the interior of a sample cooler, which contained

dried, solid substances adhering to the surface, and that she reported inflammation to her face as occurring five days later, diagnosed by a physician as contact dermatitis. The report stated that appellant did not feel anything in the cooler, but also noted the possibility that unknown and hazardous materials were in the cooler.

By letter dated April 4, 1997, the Office of Workers' Compensation Programs requested additional information as to the nature of appellant's alleged exposure and requested that she submit rationalized medical opinion evidence in support of her claim.

By decision dated May 20, 1997, the Office denied appellant's claim for compensation on the grounds that appellant failed to establish fact of injury.

On June 4, 1997 appellant requested a hearing, which was held on December 17, 1997.

In a December 16, 1997 statement, appellant noted that on February 20, 1997, she attempted to clean the interiors of two sample coolers which contained dried, solid substances adhering to the surfaces; that she was seen on February 26, 1997 by a physician at Fallon Clinic for a blister-like inflammation above her left eye, receiving only medication; and that when she awoke on February 27, 1997, the inflammation had spread significantly. Appellant indicated that she was allergic to penicillin and first thought upon seeing the eye rash that she might also be allergic to Clindamycin, a medication she had given to her pets via an eyedropper. She noted, however, that after contacting two veterinarians she was assured that the pet medication was not a derivative of penicillin. Appellant further stated:

> "I realized that I had recently cleaned two sample coolers. Sample material received at the [employing establishment] can contain bacteriological and chemical contaminants. [As I was] at work trying to secure an appointment, I discussed the inflammation of my face with my supervisor. I mentioned to him, first of all, the Clindamycin, and then second, cleaning the coolers the previous week. [He] recommended that I go at once to the [emergency room]."

The record also contains a handwritten note with an illegible signature entitled, "note re: Follow-up appointment on February 28, 1997." It related that Dr. Bissette called appellant's dermatitis a "contact reaction" as opposed to a reaction to something she ate where the allergen would have gone through the blood stream. The note further stated Dr. Bissette's opinion that exposure to the agent would have been from 24 hours up to 1 week before the onset of symptoms.

In a decision dated February 20, 1998, an Office hearing representative affirmed the Office's May 20, 1997 decision.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on February 25, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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 essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury, which must be considered. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.[5] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event of incident occurred at the time, place and in the manner alleged or whether the alleged injury was in the performance of duty. Nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act.[6]

In the instant case, appellant has submitted medical evidence indicating that she sustained pruritic rash with swelling around her left eye, identified as contact dermatitis. Appellant acknowledged on her CA-1 form that she first thought her eye condition was attributable to a medication she gave to her pets, which presumably might have gotten on her hands and then transferred to her eye area. Appellant acknowledged that she was allergic to penicillin and suspected that the pet medication, Clindamycin, was a derivative of penicillin. When she confirmed with her treating physician, Dr. Bissette, that the Clindamycin was not related to penicillin, appellant then decided that her condition must be attributable to a work incident on February 20, 1997. Appellant has stated that on February 20, 1997 she "might have been exposed" to hazardous materials or contaminants at work while she was washing an empty cooler from a river dump site, and that such exposure could have given her contact dermatitis.

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

[3] *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[5] *Id.*

[6] *See Robert J. Krysten*, 44 ECAB 227 (1992).

Unfortunately, appellant's allegations are nothing more than speculation as she has provided no affirmative evidence that the cooler was contaminated and with what specific substance.

The Board notes that Dr. Bissette has specifically opined that appellant's contact dermatitis is of unknown origin. Moreover, since more than five days occurred between the alleged exposure incident on February 20, 1997 and the outbreak of appellant's eye rash on February 25, 1997, a possibility exists that appellant's eye condition is attributable to an intervening factor not yet identified. In the absence of reliable and probative evidence to support appellant's allegation that she was injured at work on February 20, 1997, the Board concludes that appellant has failed to carry her burden of proof in establishing fact of injury.

The decision of the Office of Workers' Compensation Programs dated February 20, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 6, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member