U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMAN ROUNDTREE and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, St. Louis, MO

Docket No. 00-14; Submitted on the Record;
Issued November 15, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on May 28, 1993.

On March 6, 1997 appellant, a 54-year-old maintenance worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). He alleged that on May 28, 1993 he sustained an injury to his right elbow when a three-wheeled riding mower, which he was operating, turned over on a hillside pinning him beneath it. Appellant did not stop work.

In a statement received by the Office of Workers' Compensation Programs on October 21, 1997, appellant stated that he originally failed to file a Form CA-1 because he was fearful the incident would place his job in jeopardy. He acknowledged two other work incidents that occurred in January 1997 which did not result in declarations of being unfit for duty but were filed by the employing establishment.[1]

In a letter dated August 13, 1997, the Office advised appellant of the additional factual and medical evidence needed to establish his claim and requested that he submit such. Appellant was advised that submitting a rationalized statement from his physician addressing any causal relationship between his claimed injury and factors of his federal employment was crucial. He was allotted 30 days to submit the requested evidence.

Appellant submitted a July 30, 1996 radiographic report (x-ray) from Dr. John Benedict Shields, a Board-certified radiologist, that showed the right shoulder revealed evidence of an abnormality. Dr. Shields' impression was that appellant had an old healed radial neck fracture and degenerative arthritis.

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[1] The Office doubled claims involving work incidents of January 15 and 17, 1997 under the present case involving the May 28, 1993 injury as they involved the same body part.

Appellant also submitted unsigned progress notes dated July 30, 1996 wherein an annotation was made indicating that appellant had right elbow pain after an incident involving a lawn mower.

In a January 17, 1997 x-ray, Dr. Syed A. Abbas, Board-certified in cardiovascular disease and internal medicine, noted an old impacted fracture of the radial head and that the proximal ulna was deformed showing an old healed fracture.

In an unsigned progress note dated January 28, 1997, a comment was made concerning an on-the-job injury involving a radial neck fracture of the right arm involving a lawn mower that fell on appellant in July 1994.

In an unsigned confidential medical summary, Dr. Shaukat J. Chaudry, Board-certified in internal medicine, noted a fall and an old healed fracture of the radial head.

In unsigned employee health records from January 28, 1993 to January 17, 1997, no specific reference to the incident of May 28, 1993 was made.

An unsigned treatment note dated July 24 of an unknown year, referred to pain in appellant's right elbow and noted that he had an on-the-job injury involving his right shoulder.

In a report dated August 21, 1997, a physician whose name is illegible, noted that a lawn mower fell on appellant in "May 1993" and checked a box yes that inquired as to whether or not he believed the condition was caused or aggravated by an employment activity.

In a decision dated September 11, 1997, the Office denied appellant's claim for compensation as he did not establish the fact of injury.

Appellant requested an oral hearing in a statement received by the Office on October 21, 1997. The hearing was held on July 30, 1998. The hearing representative advised appellant of the type of medical evidence needed to establish his claim.

In a September 11, 1998 report, a physician's assistant opined that appellant's condition was due to the 1993 lawn mower incident.

In a September 24, 1998 decision, the hearing representative affirmed the September 11, 1997 decision.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on May 28, 1993.

An employee seeking benefits under the Federal Employees' Compensation 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 filed within the applicable time limitation of the Act,[2] that an injury was sustained in the

[2] Although appellant did not file his claim within three years of the May 28, 1993 incident, it appears that appellant's supervisor had knowledge of the injury on the date of the occurrence. *See* 5 U.S.C. § 8122(a)(1).

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 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]

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]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[7]

In the present case, the Office found that the May 28, 1993 incident occurred in the time, place and in the manner alleged.

The Board finds, however, that the medical evidence is not sufficient to establish that the employment incident caused a personal injury.

In this case, appellant was informed that he needed to submit a comprehensive medical report from his treating physician explaining how work factors or incidents in his employment caused or contributed to his claimed conditions. However, the medical evidence of record is not

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

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

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

[7] *James Mack*, 43 ECAB 321 (1991).

sufficient to meet his burden of proof because there is no rationalized medical evidence from any of appellant's physicians causally relating any injury to the accepted incident.

Dr. Shields, in his x-ray report dated July 30, 1996, noted that the right shoulder revealed evidence of an abnormality and an old healed radial neck fracture. However, this report does not contain any explanation or rationale regarding causal relationship between the condition and factors of appellant's federal employment. The notes did not express any opinion that the claimant's condition was causally related to the incident or medical rationale supporting such an opinion based upon a complete history.[8] He also submitted another x-ray from Dr. Abbas which was also devoid of any opinion regarding appellant's condition and factors of his federal employment.

Appellant also submitted several unsigned progress notes, a treatment note, a medical summary and employee health records. However, while some of these mentioned the fall from the lawn mower, none of the notes offered any type of rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[9]

An August 21, 1997 report from a physician whose signature is illegible, noted that a lawn mower did fall on appellant in May 1993 or July 1994 and checked the box yes indicating that appellant's condition was caused by his employment and that it occurred during the performance of work duties. However, checking of the box "yes" that the disability was causally related to employment is insufficient without further explanation or rationale, to establish causal relationship.[10] The doctor did not offer a rationalized medical opinion as to how appellant's employment caused or aggravated his condition and he was not sure which date the injury occurred.[11]

A September 11, 1998 report from a physician's assistant also supported causal relationship. However, this report is of no probative medical value as a physician's assistant is not a physician under the Act.[12]

An award of compensation may not be based upon surmise, conjecture or speculation, or upon appellant's belief that there is a causal relationship between his condition and his

[8] *Arlonia B. Taylor,* 44 ECAB 591 (1993).

[9] *See Id.*

[10] *Barbara J. Williams,* 40 ECAB 649 (1989).

[11] The opinion of the physician must be based upon a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion. *See James Mack,* 43 ECAB 321 (1991).

[12] *See* 5 U.S.C. § 8101(2). This subsection defines the term "physician." *See also Charely V.B. Harley,* 2 ECAB 208, 211 (1949) (where the Board held that medical opinion, in general, can only be given by a qualified physician).

employment.[13] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of federal employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.[14]

Consequently, appellant has not established his claim as he has submitted no medical evidence supporting that the employment incident caused or aggravated an injury.

The decision of the Office of Workers' Compensation Programs dated September 24, 1998 is hereby affirmed.

Dated, Washington, DC
November 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[13] *William S. Wright*, 45 ECAB 498 (1993).

[14] *Id.*