U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENT FALCON and U.S. POSTAL SERVICE,
POST OFFICE, Harvey, LA

Docket No. 99-441; Submitted on the Record;
Issued November 28, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
VALERIE D. EVANS-HARRELL

The issues are: (1) whether appellant met his burden of proof in establishing that he sustained an injury on February 21, 1998, as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing pursuant to section 8124(b) of the Federal Employees' Compensation Act.

Appellant, then a 23-year-old letter carrier, filed a notice of traumatic injury claim on February 21, 1998, alleging that he experienced low back pain that day while delivering mail. In an accompanying statement, appellant stated that he felt a sharp pinch in his lower back, which radiated down the right side of his body to his foot and persisted throughout the workday. Appellant continued working after the claimed injury, with short periods of disability.

The employing establishment submitted appellant's claim with medical documentation to the Office on his behalf. Additionally, the employing establishment controverted appellant's claim and, in support, submitted a narrative statement by appellant's supervisor, Randy Valence, dated February 21, 1998. Mr. Valence stated that appellant's mother had told him that she instructed appellant to call in sick on Saturday, the day of the claimed injury, because appellant's back had been hurting the day before.

In an undated duty status report, Dr. Samuel Logan, a Board-certified surgeon, reported that appellant's back began to hurt while walking his postal route. In an attached attending physician's report, he diagnosed mild lumbar strain. Dr. Logan also indicated that appellant had a preexisting or concurrent injury or disease; however, he further indicated by check mark on the form report that he believed appellant's lumbar strain was caused or aggravated by employment factors.

In a letter dated March 9, 1998, the Office stated that additional information was required, including a detailed description of how the injury occurred and whether appellant had any similar disability or symptoms prior to the injury.

In response, appellant submitted documentation from Dr. Logan, including an initial report of injury dated February 25, 1998, which related appellant's history of injury and diagnosed lumbar strain and duty status reports dated February 27, March 2 and 9, 1998, which evidenced evaluation of appellant's diagnosed condition.

By decision dated April 16, 1998, the Office denied appellant's claim on the grounds that it did not meet the requirements for establishing that he sustained an injury in the performance of duty, as required by the Act.[1] The Office found that the evidence was insufficient to establish that the injury arose out of and in the course of employment, because the evidence of record indicated that appellant sustained a prior injury.

Appellant disagreed with the April 16, 1998 decision and in a letter postmarked September 19, 1998 requested an oral hearing.

By decision dated October 20, 1998, the Office denied appellant's request for a hearing on the grounds that the request was not made within 30 days after issuance of the April 16, 1998 final decision.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury on February 21, 1998, as alleged.

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 the 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 the essential elements of each and every 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 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.[4] 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

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

surrounding facts and circumstances and his subsequent course of action.[5] A consistent history of the injury as 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.[6]

In this case, the Board finds that appellant experienced back pain on February 21, 1998, during his tour of duty delivering mail. Although the employing establishment controverted appellant's claim reporting that he possibly sustained an injury prior to the claimed date appellant's statements regarding the alleged injury and the history of injury reported by Dr. Logan, appellant's physician, indicate that the February 21, 1998 employment incident occurred as alleged.

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.[7]

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.[8]

In this case, it is not disputed that appellant was delivering mail on February 21, 1998. However, the medical evidence is insufficient to establish that this activity caused or aggravated a medical condition. The only report supporting a causal relationship between appellant's employment and his diagnosed condition is an undated attending physician's report by Dr. Logan, in which he diagnosed mild lumbar strain and indicated with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. The Board has held that an opinion on causal relationship which consists only of checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[9] Therefore, this report is insufficient to meet appellant's burden of proof.

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

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

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

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

[9] *Lucrecia M. Nielsen*, 41 ECAB 583, 594 (1991).

The remainder of the medical evidence makes note of the employment incident, however, it fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

The Board further finds that the Office properly denied appellant's request for a hearing under section 8124(b) of the Act.

Section 8124(b) of the Act, concerning a claimant's entitlement to a hearing, states that "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary … is entitled, on request made within 30 days after the date of issuance of the decision, to a hearing on his claim before a representative of the Secretary."[10] As section 8124(b)(1) is unequivocal in setting forth the time limitation for requesting a hearing, a claimant is not entitled to a hearing as a matter of right unless the request is made within the requisite 30 days.[11]

The Office in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of 1966 amendments to the Act which provided the right to a hearing,[12] when the request is made after the 30-day period established for requesting a hearing,[13] or when the request is for a second hearing on the same issue.[14] The Office's procedures which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.[15]

In the present case, appellant's hearing request was made more than 30 days after the date of issuance of the Office's prior decision dated April 16, 1998 and thus, appellant was not entitled to a hearing as a matter of right. Appellant requested a hearing in a letter postmarked September 19, 1998. Therefore, the Office was correct in stating in its October 20, 1998 decision that appellant was not entitled to a hearing as a matter of right because the hearing request was not made within 30 days of the Office's April 16, 1998 decision.

[10] 5 U.S.C. § 8124(b)(1).

[11] *Frederick D. Richardson*, 45 ECAB 454 (1994).

[12] *Rudolph Bermann*, 26 ECAB 354 (1975).

[13] *Herbert C. Holley*, 33 ECAB 140 (1981).

[14] *Johnny S. Henderson*, 34 ECAB 216 (1982).

[15] *Sandra F. Powell*, 45 ECAB 877 (1994).

While the Office also has the discretionary power to grant a hearing when a claimant is not entitled to a hearing as a matter of right, the Office, in its October 20, 1998 decision, properly exercised its discretion by stating that it had considered appellant's request and had denied it on the basis that the issue in this case could equally well be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which established that appellant sustained an injury in the performance of duty. The Board has held that, as the only limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction from established facts.[16] In this case, the evidence of record does not indicate that the Office committed any act in connection with its denial of appellant's hearing request, which could be found to be an abuse of discretion. For these reasons, the Office properly denied appellant's request for a hearing under section 8124 of the Act.

The decisions of the Office of Workers' Compensation Programs dated April 16 and October 20, 1998 are affirmed.

Dated, Washington, DC
November 28, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

[16] *Daniel J. Perea*, 42 ECAB 214 (1990).