U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GARY PUCKETT and DEPARTMENT OF THE ARMY, NATIONAL GUARD BUREAU, Augusta, ME

Docket No. 01-69; Submitted on the Record;
Issued August 9, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM, 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 March 16, 2000 appellant, then a 36-year-old materials handler, filed a notice of occupational disease (Form CA-2) alleging that on December 30, 1999 he sustained a lower back injury while performing his duties during a major distribution. Appellant did not stop work.[1]

Appellant submitted a March 8, 2000 narrative statement indicating he handled a large number of packages on January 11, 12 and 13, 2000 and subsequently experienced problems with his back. He stated that he informed his supervisor on January 14, 2000 and scheduled an appointment with his doctor, Eric Omsberg, a Board-certified neurological surgeon, for February 15, 2000. Appellant indicated that, while he was at the doctor's office, a magnetic resonance imaging (MRI) scan revealed a bulging disc at the L5 vertebrae. Appellant described his job duties and his previous condition, which occurred in April 1999.

Appellant submitted an unsigned limitation of duty form from Dr. Omsberg, which was received by the Office on March 28, 2000. He indicated that appellant could sit for extended periods of time (if he changed positions), operate a forklift and a 5-ton box truck (climbing in and out of cab with a 30" step). Dr. Omsberg reported that appellant could not lift, stand on hard surfaces for extended periods of time, bend, stoop or push and pull items that weighed over 2,500 pounds with a pallet jack. Additionally, he noted that appellant could not work in tiring and sometimes uncomfortable positions for extended periods of time.

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[1] Appellant initially filed a notice of traumatic injury and claim for continuation of pay/compensation for a Janury 1, 1999 date of injury. His claim was denied by the Office on July 14, 1999 and appellant's request for reconsideration was denied.

In reports dated February 15 and March 7, 2000, Dr. Omsberg checked the box "yes" that indicated appellant's condition was work related. He noted appellant's complaints as lower back pain and sharp pains in the left leg and foot. Dr. Omsberg indicated that appellant could work light duty; however, he did not provide a diagnosis.

By letter dated April 10, 2000, the Office requested additional factual and medical information from appellant. Specifically, the Office requested a comprehensive medical report describing appellant's symptoms, results of examinations and tests, diagnosis, the treatment provided, the effect of treatment and the doctor's opinion, with medical reasons, on the cause of the condition. Appellant was given 30 days to respond.

In a decision dated May 24, 2000, the Office denied appellant's claim for compensation on the grounds that fact of injury was not established.

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

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, 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 the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4] The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.

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

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

[4] *See Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[5] The Board has held that, in certain cases, where the causal connection is so obvious, expert medical testimony may be dispensed; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

The opinion of the physician must be based upon a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty[7] 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.

In the present case, the Office accepted the occurrence of the claimed lifting incidents but found that the medical evidence was insufficient to establish an injury.

Appellant submitted the unsigned light-duty report from Dr. Omsberg. The Board has held that any medical evidence that the Office relies upon to resolve an issue, must be in writing and signed by a qualified physician.[8] Additionally, appellant provided two reports from Dr. Omsberg dated February 15 and March 7, 2000. He checked the box "yes" indicating appellant's condition was work related. 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.[9] The reports did not contain any diagnosis and did not express any opinion that the claimant's condition was causally related to the incident. In addition, medical rationale supporting a history of injury was not submitted.[10] The Office advised appellant of the deficiency in the medical evidence, but appellant failed to submit rationalized medical opinion evidence addressing the relevant issues. Appellant, therefore, failed to meet his burden of proof.[11]

For the above-noted reasons, appellant has not established that he sustained an injury in the performance of duty.

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *James A. Long*, 40 ECAB 538 (1989); *Walter A. Fundiger*, 37 ECAB 200 (1985).

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

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

[11] The Board notes that subsequent to the Office's May 24, 2000 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

The decision of the Office of Workers' Compensation Programs dated May 24, 2000 is affirmed.

Dated, Washington, DC
August 9, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member