U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS P. BROOKS and DEPARTMENT OF THE NAVY, NAVAL SUBMARINE BASE BANGOR, Silverdale, WA

Docket No. 01-511; Submitted on the Record;
Issued August 23, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an injury in the performance of duty.

The Board has duly reviewed the case record and finds that appellant has failed to establish that he sustained an injury in the performance of duty.

On April 24, 2000 appellant, then a 55-year-old pipefitter, filed a traumatic injury claim alleging that on April 17, 2000 he experienced numbness in his left arm, hand and fingers in the performance of his duties. Appellant's claim was accompanied by factual and medical evidence. Subsequently, the Office of Workers' Compensation Programs received additional medical evidence.

In a September 15, 2000 letter, the Office advised appellant that the evidence submitted was insufficient to establish his claim. The Office requested that appellant submit additional medical evidence supportive of his claim. In response, appellant submitted medical evidence.

In an October 26, 2000 decision, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty.[1]

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim including the fact that the

---

[1] Subsequent to the Office's October 26, 2000 decision, the Office received additional medical evidence. Additionally, on appeal, appellant has submitted new evidence. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).

[2] 5 U.S.C. §§ 8101-8193.

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.[3] 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.[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] In this case, the Office accepted that appellant experienced the claimed accident as alleged. The Board finds that the evidence of record supports this incident.

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] Appellant submitted medical evidence of record, which addressed the issue whether he sustained a condition caused by the April 17, 2000 employment incident. An April 24, 2000 attending physician's report of Dr. Dennis Gilmore, an osteopath, provided a history that appellant sustained an injury on April 17, 2000 and a diagnosis of paresthesias of the left arm and back. Dr. Gilmore indicated that appellant's condition was caused or aggravated by an employment activity by placing a checkmark in the box marked "yes." The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's disability was related to the history is of diminished probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[7] Inasmuch as Dr. Gilmore failed to provide any medical rationale explaining how or why appellant's condition was caused by the April 17, 2000 employment incident, his report is insufficient to establish appellant's burden.

A May 12, 2000 report of Dr. Enayat Niakan, a Board-certified neurologist, indicated a history that appellant experienced left-sided neck pain with radiation of pain and numbness into his arm down to the first three fingers since April 4, 2000 following another on-the-job injury. Dr. Niakan provided appellant's medical and social histories, and noted his findings on neurological examination. He opined that appellant had left cervical radiculopathy "probably in

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

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

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

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

[7] *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

distribution of C6-C7 following on-the-job injury." He further opined that there was no evidence of carpal tunnel syndrome and stated he believed all of appellant's symptoms were related to cervical radiculopathy. Dr. Niakan's opinion that appellant's condition is speculative, and thus it is of limited probative value.[8] Further, Dr. Niakan's opinion does not appear to be based on an accurate factual background inasmuch as he stated that appellant's symptoms began on April 4, 2000 following another job-related injury, which indicates that appellant's injury occurred prior to the accepted April 17, 2000 employment incident.

The June 5 and 28, 2000 reports of appellant's physical therapists indicating that appellant's symptoms commenced while working are insufficient to establish appellant's burden because a physical therapist is not a physician under the Act, and therefore, is not competent to give a medical opinion.[9]

Because appellant has failed to submit rationalized medical evidence establishing that he sustained an injury in the performance of duty, he has not satisfied his burden of proof.

The October 26, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 23, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[8] *See Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

[9] 5 U.S.C. § 8101(2); *see also Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).