U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CURTIS W. HUNTER and DEPARTMENT OF JUSTICE, FEDERAL PRISON SYSTEMS, Texarkana, TX

Docket No. 00-908; Submitted on the Record;
Issued February 6, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty.

On April 7, 1999 appellant, then a 36-year-old correctional officer, filed a notice of traumatic injury alleging that, on April 5, 1999, while a nurse was changing an inmate's intravenous bag, he was splashed with intravenous fluid on the left side of his face, causing a "real burning sensation."

By letter dated May 5, 1999, the Office of Workers' Compensation Programs advised appellant that the information he had submitted was insufficient to establish that he sustained an injury as alleged on April 5, 1999. The Office requested that appellant submit medical records pertaining to his condition including x-ray results and other diagnostic test results as well as a medical report from his treating physician describing his symptoms and explaining how the reported work incident caused or aggravated the claimed injury.

In a medical report dated April 5, 1999 and received by the Office on May 27, 1999, Dr. Richard W. Peckman, Board-certified in internal medicine, stated that he had treated appellant on that day for possible exposure to human immunodeficiency virus and hepatitis B and C viruses as a result of appellant's alleged exposure to an intravenous fluid on that day.

In a medical report dated April 6, 1999 and received by the Office on May 27, 1999, Dr. Charles L. Poteet, Board-certified in family practice, treated appellant on that date. The doctor noted appellant's history of injury including Dr. Pekham's treatment of appellant with HIV prophylaxis.[1] Upon examination there were "no open sores or lesions anywhere on

[1] The Board notes that Dr. Poteet stated in his May 6, 1999 report that appellant was treated by Dr. Peckham "this morning." However, Dr. Pekham's report noted that the time of appellant's incident was April 5, 1999 at 1:00 p.m. and that the time of his treatment was at 4:45 p.m. on that date.

[appellant's] face that might have been exposed to any contaminated fluids." Dr. Poteet concluded that the probability of exposure to any blood or blood products was low, and "the probability of [appellant] contracting disease [was] so low as to be negligible."

By decision dated June 14, 1999, the Office denied appellant's claim for compensation on the grounds that he failed to establish fact of injury. The Office accepted that the incident occurred as alleged, but found that the evidence did not establish the existence of a condition diagnosed in connection with the employment incident.

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on April 5, 1999.

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 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.[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. In this case, the Office accepted that the first component, the employment incident, occurred as alleged.[5] The second component is whether the employment incident caused a personal injury and this generally can only be established by medical evidence. Causal relationship is a medical issue and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.[6] Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[7] must be one of reasonable medical certainty,[8] and must be

[2] 5 U.S.C. §§ 8101-8193.

[3] *Mary J. Briggs*, 37 ECAB 578 (1986).

[4] *Id.*

[5] *Id.*

[6] *Id.*

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

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

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[9]

In this case, appellant experienced the employment incident at the time, place and in the manner alleged. Whether the employment incident caused a personal injury generally can be established only by medical evidence, and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on April 5, 1999 caused a personal injury and resultant disability.

The only medical evidence appellant submitted were the April 5, 1999 report of Dr. Peckman and the April 6, 1999 report of Dr. Poteet. Dr. Peckman did not find that appellant sustained an injury as a result of the possible contact. Further, Dr. Poteet found no open sores or lesions that might have been exposed to any contaminated fluids, and stated that the probability of exposure to blood or blood products was low, and of contracting a disease was negligible.

Neither report establishes that appellant's April 5, 1999 employment incident caused a personal injury or resultant disability. Because appellant did not provide a medical opinion explaining the medical process through which the April 5, 1999 work incident would have to cause the claimed injury, he has filed to meet his burden of proof.

The June 14, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.[10]

Dated, Washington, D.C.
February 6, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[9] *William E. Enright,* 31 ECAB 426, 430 (1980).

[10] The Board notes that this case record contains evidence which was submitted subsequent to the Office's June 14, 1999 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell,* 5 ECAB 35, 36 (1952).