U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS J. BRYAN and DEPARTMENT OF DEFENSE, DEFENSE LOGISTICS AGENCY, Fort Hood, TX

Docket No. 01-37; Submitted on the Record;
Issued July 25, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant has established that her disability is causally related to an October 1, 1999 injury; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing.

On October 4, 1999 appellant, then a 53-year-old property disposal specialist, filed a traumatic injury claim (Form CA-1) for a pulled muscle in her right side and hip sustained while moving a pallet from one location to another on October 1, 1999.

In a duty status report (Form CA-17) dated October 11 and 18, 1999, Ronald K. Smith, a physician's assistant, noted the history of the injury, diagnosed abdomen muscle strain and checked "yes" that the condition was related to the employment injury.

By letter dated May 8, 2000, the Office informed appellant that the evidence was insufficient to support her claim and advised her to submit medical records from her physicians and noted the information that the physician's report should include. The Office allowed appellant 30 days to submit additional information.

By decision dated June 8, 2000, the Office denied appellant's claim on the basis that the record contained no medical evidence establishing a causal relationship between her diagnosed condition and the employment injury.

On July 26, 2000[1] appellant requested a review of the written record and submitted evidence in support of her claim.[2]

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[1] The postmark on the envelope is July 28, 2000.

[2] Appellant resubmitted the CA-17 forms which Mr. Smith had signed with an attending physician's signature. Appellant indicated the physician was Dr. Paul Gerdes, but the signature is illegible.

By decision dated September 7, 2000, the Office denied appellant's request for a hearing.

The Board finds that appellant has not established that her disability is causally related to her October 1, 1999 employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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.[4] 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.[5]

The Office, in determining whether an employee actually sustained an injury in the performance of duty, must first consider 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.[6] The second component is whether the employment incident caused a personal injury and this generally can only be established 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]

In this case, the Office accepted that appellant experienced the claimed incident; however, it notified appellant that the medical evidence submitted was insufficient to support her claim of injury.

The only medical evidence received by the Office were CA-17 forms signed by a physician's assistant. However, a physician's assistant is not a "physician" within the meaning of the Act and is, therefore, not competent to give a medical opinion.[8] Because the CA-17 forms were not signed by a physician, these documents cannot be considered competent medical evidence.[9]

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[3] 5 U.S.C. §§ 8101-8193.

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

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

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

[7] *John M. Tornello*, 35 ECAB 234 (1983).

[8] *See Diane Williams*, 47 ECAB 613 (1996); *Shelia A. Johnson*, 46 ECAB 323 (1994); *Guadalupe Julia Sandoval*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

[9] *Diane Williams*, *supra* note 8.

Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.[10] Because appellant failed to submit any such evidence to support that her federal employment caused an injury, the Board finds that the Office properly found that she failed to submit a *prima facie* claim for compensation in its June 8, 2000 decision.

The Board also finds that the Office properly denied appellant's request for a hearing.

Section 8124(b)(1) of the Act provides that "a claimant ... is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary."[11] Section 10.615 of the Office's federal regulations implementing this section of the Act, provides that a claimant shall be afforded the choice of an oral hearing or a review of the written record by a representative of the Secretary.[12] Thus, a claimant has a choice of requesting an oral hearing or a review of the written record pursuant to section 8124(b)(1) of the Act and its implementing regulation.

Section 10.616(a) of the Office's regulations[13] provides in pertinent part that the hearing request must be sent within 30 days of the date of issuance of the decision (as determined by the postmark or other carriers marking) of the date of the decision for which a hearing is sought.

The Board has held that 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 that the Office must exercise this discretionary authority in deciding whether to grant a hearing.[14] 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 the 1966 amendments to the Act, which provided the right to a hearing,[15] when the request is made after the 30-day period for requesting a hearing[16] and when the request is for a second hearing on the same issue.[17]

In this case, appellant's letter requesting written review before the Branch of Hearings and Review was dated July 26, 2000, with a postmark of July 28, 2000 on the envelope, more than 30 days after the Office issued the June 8, 2000 decision. The Office properly found that appellant was not entitled to a hearing. The Office exercised its discretion in denying appellant's request and noted appellant could submit additional evidence with a request for reconsideration.

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[10] *Earl D. Price*, 39 ECAB 1053 (1988).

[11] 5 U.S.C. § 8124(b)(1).

[12] 20 C.F.R. § 10.615.

[13] 20 C.F.R. § 10.131(a).

[14] *Henry Moreno*, 39 ECAB 475, 482 (1988).

[15] *Rudolph Bermann*, 26 ECAB 354, 360 (1975).

[16] *Herbert C. Holley*, 33 ECAB 140, 142 (1981).

[17] *Frederick Richardson*, 45 ECAB 454, 466 (1994); *Johnny S. Henderson*, 34 ECAB 216, 219 (1982).

The September 7 and June 8, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
July 25, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member