U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK H. THIBODEAU and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Fort Fairfield, ME

Docket No. 00-2211; Submitted on the Record;
Issued May 25, 2001

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant sustained an injury while in the performance of duty on August 13, 1999; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for merit review constituted an abuse of discretion.

On September 9, 1999 appellant, then a 51-year-old immigration inspector, filed a notice of traumatic injury alleging that on August 13, 1999, while at a training course in Georgia, he injured his right hand. Appellant did not stop work.

Appellant submitted a partially illegible medical form dated August 14, 1999 from the Southeast Georgia Regional Medical Center, which lists a diagnosis of contusion to right arm and thumb and releases appellant to regular duty. In addition, appellant submitted a copy of an August 14, 1999 prescription for Motrin.

By letter dated September 30, 1999, the Office requested additional medical evidence. In response to the Office's request, appellant submitted copies of emergency room treatment notes dated August 14, 1999 from Southeast Georgia Regional Medical Center.

In a decision dated November 2, 1999, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that appellant sustained a right hand injury while in the performance of duty, as required by the Federal Employees' Compensation Act.[1]

By letter dated February 25, 2000, appellant requested reconsideration of the Office's decision. Appellant stated that on August 13, 1999 he participated in a pepper spray training program, which involved spraying and being sprayed with simulated spray, handcuffing and practicing other restraint techniques. While training, he injured his right hand by breaking a fall. He asserted that when he began the class his hand felt fine, but when the class was over, it hurt.

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[1] 5 U.S.C. §§ 8101-8193.

Appellant stated that the following morning, August 14, 1999, he sought medical attention, as he was concerned he might have a fracture or other serious condition. Appellant stated that he had forwarded all his medical records to the Office and that while he understood that the medical records lacked certain information, there was nothing he could do to alter their content. Appellant concluded by requesting that the Office pay his bill for $198.20 from the Southeast Georgia Regional Medical Center.

By decision dated April 7, 2000, the Office found that appellant's request was insufficient to warrant merit review of his claim.

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

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] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] 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 surrounding facts and circumstances and his subsequent course of action.[6] 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.[7]

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[2] *Joe D. Cameron,* 42 ECAB 153 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

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

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

[5] *John J. Carlone*, 41 ECAB 354 (1989).

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

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

In this case, it is undisputed that on August 13, 1999 appellant participated in a physically demanding training session and that the following day he sought medical attention for pain in his hand.

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 claimed, as well as any attendant disability 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.[8]

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.[9]

In this case, the medical evidence is insufficient to establish that appellant's participation in the training session caused or aggravated a medical condition. The medical evidence consists of a series of treatment notes, all dated August 14, 1999, completed by medical personnel of the emergency department of the Southeast Georgia Regional Medical Center. A treatment note signed by a registered nurse noted that appellant hurt his hand "at PE yesterday," that he was able to move his fingers, that there was no bruising and that x-rays had been ordered. An accompanying radiology report noted an old healed deformity of the head of the fifth metacarpal, but identified no acute bony or soft tissue abnormalities.

Finally, a treatment form signed by Dr. Paul Kolodej indicated that appellant had hurt his right hand yesterday but was not sure exactly what he did and did not remember a specific injury, only the he awoke the next morning with right hand pain. Dr. Kolodej diagnosed contusion to the right hand, prescribed Motrin and released appellant to follow up with his treating physician in 24 to 48 hours. Because the record contains no rationalized medical opinion on the causal relationship, if any, between the claimed incident and the diagnosed condition, the medical evidence of record is insufficient to establish causal relationship[10] and, therefore, insufficient to meet appellant's burden of proof.

The Board further finds that the Office acted within its discretion in denying appellant's request for review.

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

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

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

Section 10.606 of Title 20 of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.[11] Section 10.608 provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.

In his February 25, 2000 reconsideration request, appellant again asserted that he had injured his right hand while in the performance of duty, but did not submit any corroborative medical or factual evidence in support of his claim. Because appellant did not raise any arguments concerning the facts or law in this case and did not submit relevant and pertinent evidence not previously considered by the Office, the Board finds that the Office acted within its discretion in refusing to reopen appellant's claim for review of the merits on April 7, 2000.[12]

The April 7, 2000 and November 2, 1999 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 25, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[11] 20 C.F.R. § 10.606(b).

[12] Subsequent to the Office's April 7, 2000 decision denying merit review of appellant's claim, appellant submitted additional evidence, including a witness statement from a coparticipant in the August 13, 1999 training class. The Board cannot consider this evidence, however, as it is precluded from reviewing any evidence that was not before the Office at the time of the final decision on appeal; *see* 20 C.F.R. § 501.2(c).