U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY A. GIST and DEPARTMENT OF DEFENSE, DEFENSE MILITARY PAY OFFICE, Fort Benning, GA

Docket No. 01-603; Submitted on the Record;
Issued October 2, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant sustained a right shoulder condition in the performance of duty.

On December 10, 1999 appellant, then a 49-year-old teller, filed a claim for a right shoulder rotator cuff strain that she attributed to repetitious movements involved in inputting 150 to 350 cards into a machine daily since February 1999. Appellant stopped work on December 1, 1999 and returned to work on December 6, 1999.

By decision dated March 16, 2000, the Office of Workers' Compensation Programs found that the evidence supported that appellant experienced the claimed employment factor, but that "the evidence did not establish that a condition has been diagnosed in connection with this. Therefore, an injury within the meaning of the Federal Employees' Compensation Act (FECA) was not demonstrated."

By letter dated March 22, 2000, appellant requested a hearing, but withdrew this request by a telephone call on September 22, 2000. In a letter dated September 27, 2000, appellant attributed her right shoulder condition not only to processing cards by machine, which was discontinued in February 2000, but also to a July 1998 traumatic employment injury in which she slipped and fell.

By decision dated October 30, 2000, an Office hearing representative, after reviewing the written record, found that appellant had not submitted any medical evidence establishing that employment factors or her July 15, 1998 employment injury resulted in a right shoulder condition.

The Board finds that appellant has not established that appellant sustained a right shoulder condition in the performance of duty.

An employee seeking benefits under the Act[1] has the burden of establishing the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] 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.[5]

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[6]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[7] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[8]

In this case, appellant has established both an employment incident -- a slip and fall on July 15, 1998 and an employment factor -- the processing of cards by machine. Appellant, however, has failed to meet her burden of proof for the reason that she has not submitted medical evidence establishing that the July 15, 1998 incident or the employment factor of processing cards resulted in a right shoulder condition.

---

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983).

[3] *James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

[5] *See Daniel R. Hickman*, *supra* note 2.

[6] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

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

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

Appellant submitted medical reports regarding her July 15, 1998 employment injury. None of these reports, however, indicates that this injury resulted in any right shoulder condition. Regarding her use of a card machine at work, appellant submitted reports from a physical therapist, a chiropractor and a physician's assistant. As none of these reports are from a "physician" as defined in section 8101(2) of the Act,[9] they do not constitute competent medical evidence to support a claim for compensation.[10] Even if these reports constituted competent medical evidence, they would be insufficient to establish appellant's claim for compensation, as none of these reports contains an opinion that appellant's work duties caused or contributed to her right shoulder condition.

The decisions of the Office of Workers' Compensation Programs dated October 30 and March 16, 2000 are affirmed.

Dated, Washington, DC
October 2, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] 5 U.S.C. § 8101(2).

[10] *John D. Williams* 37 ECAB 238 (1985) (Physician's assistant); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (Physical therapist); *Robert H. St.Onge*, 43 ECAB 1169 (1992) (Chiropractor is "physician" only when treating subluxation demonstrated by x-ray to exist).