U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY JONBORG and DEPARTMENT OF STATE,
U.S. EMBASSY, Copenhagen, Denmark

Docket No. 02-1376; Submitted on the Record;
Issued December 13, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of duty on March 28, 2001.

On August 15, 2001 appellant, then a 39-year-old motor pool driver, filed a claim for a traumatic whiplash injury to his neck sustained on March 28, 2001 when the car he was driving was struck by another car from behind. Appellant's supervisor indicated that appellant first received medical care on March 28, 2001 at a hospital emergency room. An accident report dated August 15, 2001 estimated that appellant lost eight hours from work.

By letter dated December 13, 2001, the Office of Workers' Compensation Programs requested that the employing establishment submit further information on the circumstances of appellant's automobile accident on March 28, 2001, including the purpose of his trip and the location of his accident. The letter stated: "The questions are to be answered by the official superior or other person in authority, not by the employee." A copy of this letter was sent to appellant, as was another December 13, 2001 letter requesting information on possible liability of a third party for the automobile accident.

By decision dated January 14, 2002, the Office found that the evidence was "insufficient to establish the injury arose out of and in the course of employment at the time, place and in the manner alleged because there was not enough factual and medical documentation upon which to make a determination."

The Board finds that the case is not in posture for a decision.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim[2] including the fact that the

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.115.

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]

However, it is well established that proceedings under the Act are not adversarial in nature.[6] While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[7] When a claimant initially submits supportive factual and/or medical evidence which the Office determines is not sufficient to meet the burden of proof, the Office must inform the claimant of the additional evidence needed and allow at least 30 days for the submission of such evidence.[8]

The Office did not properly advise appellant of the evidence needed to meet his burden of proof and provide him an opportunity to submit such evidence. By its December 13, 2001 letter, the Office advised the employing establishment of the further evidence needed to determine whether appellant's March 28, 2001 automobile accident occurred in the performance of duty, but this letter specifically stated that the questions were to be answered by an official of the employing establishment, not by appellant. Thus, even though a copy of this letter was sent to appellant, he was not advised that any further factual information was needed from him for the adjudication of his case. The Office did not advise the employing establishment or appellant that medical evidence was needed to adjudicate the claim.

On appeal, the employing establishment submitted to the Board the information requested in the Office's December 13, 2001 letter, plus medical evidence. This evidence cannot be considered by the Board, for the reason that the Board's review of a case is limited to "the evidence in the case record which was before the Office at the time of its final decision."[9] On return of the case record, the Office should review this material, advise appellant if further information is needed and proceed to an adjudication of his claim.

[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] *See Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[7] *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

[8] 20 C.F.R. § 10.121. The Office's procedure manual also provides that the Office "has the obligation to aid in this process by giving detailed instructions for developing the required evidence," and that the Office "is responsible for notifying the claimant of unresolved issues which, if not satisfied, will lead to denial of the claim." Federal (FECA) Procedure Manual, Part 2 -- Claims, *Development of Claims*, Chapter 2.800.3a, c(5) (April 1993)

[9] 20 C.F.R. § 501.2(c).

The January 14, 2002 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to the Office for action consistent with this decision of the Board.

Dated, Washington, DC
December 13, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member