U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KENNETH R. HALL and U.S. POSTAL SERVICE,
POST OFFICE, Chapel Hill, NC

Docket No. 01-1388; Submitted on the Record;
Issued January 24, 2002

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he developed a collapsed right lung in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).

On November 7, 2000 appellant, then a 55-year-old letter carrier, filed a claim for compensation, alleging that he sustained a collapsed lung while unloading large parcels of mail. Appellant stopped work on May 17, 1999 and returned on May 22, 2000.

Accompanying appellant's claim was a note from Dr. Glen Willett, a Board-certified family practitioner, dated May 19, 2000 and discharge instructions. His note indicated that appellant had been under his care for a spontaneous pneumothorax. Dr. Willett noted that appellant was treated at the hospital from May 17 to May 19, 2000. He indicated that appellant could return to work.

By letter dated December 1, 2000, the Office requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury. The Office particularly advised appellant of the type of medical evidence needed to establish his claim.

In response to the Office's request, appellant submitted a hospital admission from May 17 to May 19, 2000; a clinic note from Dr. Thomas D'Amico, a Board-certified thoracic surgeon, dated June 1, 2000; three witness statements from Alfred Gillespie, Brian Frazier and K. Robin Lockhart; and a narrative statement. The hospital admission note indicated that appellant was treated for a large right-sided pneumothorax. The emergency room note indicated that appellant presented with shortness of breath and chest pain which began the previous day. The admitting physician, Dr. Richard Serra, Board-certified in emergency medicine, diagnosed appellant with a spontaneous right pneumothorax of uncertain cause. The note from Dr. D'Amico dated June 1, 2000 indicated that appellant was recovering from a pneumothorax

and was released from the doctors' care. The witness statement from Mr. Gillespie indicated that on May 16, 2000 he issued two heavy boxes, four feet by two feet, to appellant for delivery on his mail route. The statement from Mr. Frazier, the delivery supervisor, indicated that he assisted appellant in preparing the CA-1 form and noted that appellant was injured in the performance of duty. He noted that the CA-1 form was later changed to reflect that the cause of appellant's injury was unknown. The statement from Mr. Lockhart indicated that in May 2000 appellant informed him that he lifted heavy parcels prior to his injury and believed this to be the cause of his collapsed lung. Appellant's narrative statement noted that he sustained a collapsed lung in the course of employment when lifting two boxes. He stated that his delay in filing a claim was the result of not being provided with a CA-1 form.

On January 24, 2001 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.[1] The Office found that the medical evidence was not sufficient to establish that his medical condition was caused by employment factors.

By letter dated April 15, 2001, appellant requested reconsideration of the January 24, 2001 decision of the Office. He did not submit additional evidence.

By decision dated May 2, 2001, the Office denied appellant's application for review without conducting a merit review on the grounds that he did not submit new and relevant evidence and was, therefore, insufficient to warrant a merit review of the prior decision.

The Board finds that appellant has not met his burden of proof in establishing that he developed a lung condition 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 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."[2] 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.[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.

[1] 5 U.S.C. §§ 8101-8193.

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

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

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]

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, as well as any attendant disability claimed and the employment event or incident, appellant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[7]

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.[8]

In this case, it is not disputed that appellant was lifting heavy parcels on May 16, 2000. However, he has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged lung condition is causally related to the employment factors or conditions. On December 1, 2000 the Office advised appellant of the type of medical evidence needed to establish his claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated his lung condition. The only medical reports submitted by appellant was a hospital admission note and a note from Dr. D'Amico dated June 1, 2000. The admission note from May 17, 2000 indicated that appellant was treated for a large right-sided pneumothorax with symptoms, which began the previous day. However, none of the admission documents noted a history of appellant's injury; indicated that this was a work-related injury; or noted the employment factors which were believed to have caused or contributed to

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

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

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

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

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

appellant's lung condition.[9] Rather, the admitting physician, Dr. Serra, couched his opinion in speculative terms and diagnosed appellant with a spontaneous right pneumothorax of "uncertain cause."[10] The note from Dr. D'Amico dated June 1, 2000 indicated that appellant was recovering from a pneumothorax and was released from the doctor's care. However, Dr. D'Amico's report did not include a rationalized opinion regarding the causal relationship between appellant's lung condition and the factors of employment believed to have caused or contributed to such condition.[11] Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[12] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

The Board further finds that the Office properly refused to reopen appellant's case for a merit review under 5 U.S.C. § 8128(a).[13]

Under section 8128(a) of the Act,[14] the Office has the discretion to reopen a case for review on the merits. The Office must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations,[15] which provides that a claimant may obtain review of the merits if his written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

> "(i) Shows that OWCP erroneously applied or interpreted a specific point of law; or

[9] *See Cowan Mullins,* 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[10] *See Leonard J. O'Keefe,* 14 ECAB 42, 28 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).

[11] *See Theron J. Barham,* 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

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

[13] *See* 20 C.F.R. § 10.606(b)(2)(i-iii).

[14] 5 U.S.C. § 8128(a).

[15] 20 C.F.R. § 10.606(b) (1999).

"(ii) Advances a relevant legal argument not previously considered by the Office; or

"(iii) Constitutes relevant and pertinent new evidence not previously considered by the Office."

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by the Office without review of the merits of the claim.[16]

In this case, appellant has not shown that the Office erroneously applied or interpreted a point of law; he has not advanced a point of law or fact not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. No new and relevant medical evidence accompanied the April 15, 2001 reconsideration request. This is important since the outstanding issue in the case, whether appellant sustained an injury in the course of employment, is medical in nature. His reconsideration request only asserted that medical evidence was forthcoming.

Additionally, appellant's April 15, 2001 letter did not otherwise show that the Office erroneously applied or interpreted a point of law or did not advance a point of law or fact not previously considered by the Office. For these reasons, the Office properly denied appellant's reconsideration request without conducting a merit review of the record.

The decisions of the Office of Workers' Compensation Programs dated May 2 and January 24, 2001 are affirmed.

Dated, Washington, DC
January 24, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[16] 20 C.F.R. § 10.608(b).