U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARVIN L. PETERSON and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Jackson, MS

Docket No. 02-2332; Submitted on the Record;
Issued April 28, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he developed a back and shoulder condition in the performance of duty.

On July 26, 2001 appellant, then a 42-year-old psychiatric nursing assistant, filed a claim for compensation, alleging that he sustained a back and shoulder injury when lifting a patient. He did not stop work.

Accompanying appellant's claim were reports from Dr. Michael W. Cantrell, a family practitioner, dated July 26 to August 14, 2001 and a magnetic resonance imaging (MRI) scan of the left shoulder dated August 13, 2001. Dr. Cantrell noted that appellant sustained a left shoulder injury when lifting a patient. He noted that the shoulder was not improving and the MRI revealed a partial tear of the supraspinatous. Dr. Cantrell's note of August 14, 2001 indicated that appellant sustained a shoulder injury one week ago at work and he was unsure of the mechanism of injury. The MRI revealed a probable partial thickness tear of the insertion of supraspinatus muscle.

By letter dated October 22, 2001, the Office of Workers' Compensation Programs 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.

On November 29, 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 insufficient to establish that his medical condition was caused by employment factors.

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[1] 5 U.S.C. §§ 8101-8193.

By letter December 21, 2001, appellant requested reconsideration of the November 29, 2001 decision of the Office. He submitted additional medical evidence including duplicate copies of Dr. Cantrell's report dated August 14, 2001; a duplicate copy of an MRI dated August 13, 2001 and x-rays; and occupational therapy notes from August 2001 to September 2001.

By decision dated January 16, 2002, the Office denied appellant's application for review without conducting a merit review on the grounds that the evidence submitted was cumulative in nature and insufficient to warrant review of the prior decision.

In a letter dated January 25, 2002, appellant requested reconsideration of the Office decision and submitted a report from Dr. B.L. Payne, an internist, dated January 24, 2002; a note from a nurse; and duplicate copies of the August 14, 2002 report from Dr. Cantrell and occupational therapy notes. Dr. Payne indicated that appellant injured his left shoulder while lifting a patient on July 26, 2001. He noted that appellant's symptoms did not improve with time. Dr. Payne indicated that appellant's shoulder problems were caused by the accident, which occurred on the job on July 26, 2001. The nursing note indicated that Dr. Payne did not examine appellant for his shoulder injury, rather he reviewed his medical records and provided an opinion as to the cause of the injury.

In a merit decision dated April 12, 2002, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to warrant modification of the previous decision.

The Board finds that appellant has not met his burden of proof in establishing that he developed a back or shoulder condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation 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 is 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.

[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, the employee 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 a patient in the course of his employment duties. 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 shoulder condition is causally related to the employment factors or conditions. On October 22, 2001 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 shoulder condition.

The only medical reports submitted by appellant were from Dr. Cantrell and Dr. Payne. Dr. Cantrell's note of August 14, 2001 indicated that appellant sustained a shoulder injury. However, Dr. Cantrell's report does not note the employment factors believed to have caused or contributed to appellant's left shoulder condition nor does he indicate an accurate history of the alleged injury reporting that the injury occurred one week before appellant's visit on August 14,

[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).

2001, which was inconsistent with the July 26, 2001 date of injury provided by him.[9] Moreover, Dr. Cantrell couched his opinion in speculative terms indicating that appellant's injury occurred "at work unsure of mechanism" and he did not reference any particular employment factors as causing appellant's condition.[10] Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Payne in his report dated January 24, 2002 indicated that appellant injured his left shoulder while lifting a patient on July 26, 2001. He noted that appellant's symptoms did not improve with time. Dr. Payne noted that appellant's shoulder problems were "caused by the accident which occurred on the job here on July 26, 2001." Although, his opinion somewhat supports causal relationship in a conclusory statement he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.[11] Additionally, the Board notes that a letter prepared by Dr. Payne's nurse dated March 5, 2002 indicated that appellant was never actually examined by the doctor, rather Dr. Payne reviewed medical records and provided an opinion. This report is insufficient to meet appellant's burden of proof.

Appellant also submitted occupational therapy notes. However the Board notes that such reports are not considered medical evidence as physical therapist are not considered physician's under the Act.[12]

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 insufficient 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.[13] Causal relationships must be established by

[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).

[12] *See* 5 U.S.C. § 8101(2) (this subsection defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term ''physician'' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist and subject to regulation by the Secretary); *see also Charley V.B. Harley,* 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

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

rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.[14]

The decision of the Office of Workers' Compensation Programs dated April 12, 2002 is affirmed.

Dated, Washington, DC
April 28, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[14] With his appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).