U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK L. EASTLAND and TENNESSEE VALLEY AUTHORITY, TRANSPORTATION SERVICES, Muscle Shoals, AL

Docket No. 03-1111; Submitted on the Record;
Issued July 10, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty on July 14, 1982.

The case was before the Board on a prior appeal. In a decision dated September 17, 2002, the Board affirmed a December 17, 2001 decision by an Office of Workers' Compensation Programs' hearing representative, finding that appellant did not establish an injury causally related to a July 14, 1982 employment incident.[1] The history of the case is contained in the Board's prior decision and is incorporated herein by reference.

By letter dated September 16, 2002, appellant requested reconsideration of his claim and submitted additional evidence. In a letter dated November 13, 2002, he stated that he had injured his back in a helicopter incident while at the employing establishment and argued that he should not be penalized because the employing establishment's physician did not submit an adequate report.

In a decision dated December 20, 2002, the Office reviewed the case on its merits and denied modification of the denial of the claim.

The Board finds that appellant has not met his burden of proof to establish an employment-related injury on July 14, 1982.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] In

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[1] Docket No. 02-1075.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

As the Board noted in its prior decision, the Office accepted that on July 14, 1982 appellant was in a helicopter that developed engine trouble and was forced to make a hard landing. The issue is whether there is sufficient medical evidence to establish an injury causally related to the employment incident. The Board found in its prior decision that the medical evidence of record as of December 17, 2001 was insufficient to meet appellant's burden of proof. A review of the medical evidence submitted after December 17, 2001 indicates that he did not submit any probative medical evidence on the issue presented.

The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.[5] Appellant submitted a report dated April 8, 1985 from Dr. Wyatt Simpson, an orthopedic surgeon, which was previously of record and an accompanying treatment note that is not relevant to the issue presented.[6] He also submitted treatment notes dated May 3 and October 13, 1993. There is no evidence as to who prepared these notes. It is well established that, to be of probative medical value, a report must be from a "physician" as defined by the Act.[7] Since it is not clear whether the treatment notes are from a physician, they are of no probative value.[8]

Appellant has not submitted a medical report that contains a complete factual and medical history, along with a reasoned medical opinion on causal relationship between a diagnosed condition and the July 14, 1982 employment incident. It is appellant's burden of proof to submit the necessary evidence to establish his claim and the Board finds that he has not met his burden of proof in this case.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

[6] Dr. Simpson appears to be discussing a different employment incident, as he refers to a helicopter door striking appellant's left elbow while he was spinning the starter motor; the treatment note indicates that the incident occurred in December 1984.

[7] *See, e.g., Jerre R. Rinehart*, 45 ECAB 518 (1994); 5 U.S.C. § 8101(2).

[8] As the Office noted in its December 20, 2002 decision, even if it were established that the notes were prepared by a physician, they would be of diminished probative value to the issue presented.

The decision of the Office of Workers' Compensation Programs dated December 20, 2002 is affirmed.

Dated, Washington, DC
July 10, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member