U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHRISTIAN C. BOOKTER and DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Ashville, NC

Docket No. 03-1004; Submitted on the Record;
Issued October 9, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty on May 8, 2002.

On June 3, 2002 appellant, then a 52-year-old exhibit specialist, filed a notice of traumatic injury alleging that on May 8, 2002 law enforcement rangers burned narcotics outside his office window, which caused him to inhale marijuana smoke and then experience ongoing hallucinations, extreme anxiety and mental disorientation. The record reflects that on June 3, 2002 he sought treatment with Dr. Laurie Hamilton, a psychologist, who indicated that appellant, was experiencing visual hallucinations secondary to marijuana poisoning. She prescribed a detoxification program to include mega-doses of vitamins C and B complex, vigorous exercise and a time in a sauna or sweat lodge. Dr. Hamilton also recommended short term use of an antipsychotic drug. Appellant stopped work on June 3, 2002 and has not returned.[1]

In support of his claim, appellant also submitted a treatment note dated June 7, 2002, which is unsigned and fails to identify the examining physician. He is listed on the treatment note as having a past history of post-traumatic stress disorder but no prior hallucinations. It states that appellant was doing well until May 8, 2002, when some park rangers burned some marijuana in a large barbecue grill located just outside of his office window. He apparently related that he fell asleep after inhaling the smoke and woke up later that evening feeling disoriented. Appellant reported daily hallucinations, such as seeing panels on wood moving and letters sliding off a printed page. He described that he suffered marked anxiety following the hallucinations and was unable to return to work. The diagnosis listed on the treatment note was status post smoke inhalation, exacerbation of post-traumatic stress disorder and acute schizoaffective disorder.

[1] In a duty status report dated July 12, 2002, Dr. Hamilton maintained that appellant was totally disabled for work.

By letter dated July 9, 2002, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish his claim for compensation, including a rationalized medical opinion, addressing in detail, how appellant's alleged marijuana exposure resulted in a medical condition that required ongoing medical treatment and also disabled him from work for such an extended period of time. The Office further asked appellant to explain why he took so long to file his claim and seek medical attention.[2] He responded to the Office's inquiry by letter dated July 17, 2002. Appellant explained that he was delayed in filing his claim and seeking medical attention because he lived alone and was suffering from hallucinations and panic attacks following the May 8, 2002 work incident. He alleged that he had to wait for his girlfriend to drive down from Tennessee, before he could go anywhere to file his claim. Appellant further described having difficulty finding a doctor who would accept workers' compensation cases.

On July 29, 2002 Tim Francis, an employing establishment official, also filed a responsive statement. Mr. Francis stated that on May 8, 2002 law enforcement rangers incinerated 913 grams of seized marijuana on a grill outside of the building where appellant worked. He stated that the marijuana was totally saturated with lighter fluid, ignited and then monitored until it completely burned out. Mr. Francis noted that the grill was located 60 feet from appellant's office window and that the marijuana took approximately 20 minutes to completely burn. According to him, appellant sent an email message to him one or two days after the burning to complain about the smoke. Although he asked that appellant discuss the matter with him in person, he had no further contact with appellant regarding the matter.

In an August 13, 2002 statement, Mr. Gentry related that appellant worked in an air-conditioned office with windows, but stated that he was unaware if appellant had left either his window or door open for fresh air on the day that the seized marijuana was burned.

In a hospital discharge summary dated August 22, 2002, Dr. James P. Michalets, a psychiatrist, indicated that appellant had post-traumatic stress disorder causally related to his Vietnam military experience and had been admitted for hospitalization for treatment of depression and suicidal ideations secondary to his chronic post-traumatic stress disorder. The physician gave a history of severe alcohol dependence with resultant alcoholic hepatitis and sclerosis. Dr. Michalets noted that appellant had sustained a closed-head injury in Vietnam. He also noted that appellant's situation was complicated by the death of his wife and daughter several years ago in a motor vehicle accident. Dr. Michalets, however, did not give any history of the marijuana burning episode. He related that appellant suffered problems with his memory and experienced both visual and auditory hallucinations. On physical examination, there were no gross abnormalities. A magnetic resonance imaging (MRI) scan of the brain showed small left occipital parietal lesions consistent with old infarct or scars. The discharge diagnoses included post-traumatic stress disorder, iron deficiency anemia, esophageal problems, status post closed-head injury and sclerosis of the liver.

[2] By copy of the letter, the Office also asked the employing establishment to provide a statement verifying exactly what took place on May 8, 2002, what chemicals were used and whether air sample survey results were available, in addition to stating how close appellant was to the burning material.

In a decision dated August 27, 2002, the Office denied compensation on the grounds that the medical evidence of record was insufficient to establish that appellant sustained a medical condition as a result of exposure to marijuana smoke on May 8, 2002. By letter dated September 4, 2002, appellant requested review of the written record and submitted a letter from Vicky Smith also dated September 4, 2002, which verified that she had driven appellant for medical treatment on May 10, 2002. She described that, when she first saw appellant on May 10, 2002 he was anxious and had difficulty explaining what happened to him at work on May 8, 2002. Ms. Smith confirmed that appellant had a blood test and that she assisted him in filing his workers' compensation claim as he seemed mentally incapable of handling the matter on his own. Appellant also submitted a copy of a laboratory report dated September 3, 2002, indicating that he underwent a blood test on May 10, 2002, but that there was no drug levels demonstrated.[3] In a January 27, 2003 decision, the Office hearing representative affirmed the Office's August 27, 2002 decision.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on May 8, 2002.

An employee seeking benefits under the Federal Employees' Compensation Act[4] 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 timely filed within the applicable time limitation period 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.[5] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury that must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

[3] Appellant alleged that he had his blood tested on May 10, 2002 and assumed that the technician would test for drugs but was only told that he had no evidence of hepatitis or viruses.

[4] 5 U.S.C. §§ 8101-8193.

[5] *Caroline Thomas*, 51 ECAB 451 (2000); *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *See id*; *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Elaine Pendleton, supra* note 5.

establish that the employment incident caused a personal injury.[8] The medical evidence required to establish a causal relationship, generally is rationalized medical evidence.[9]

The Board finds sufficient evidence in the record from which to conclude that a work incident occurred on May 8, 2002, which consisted of the burning of marijuana approximately 60 feet from appellant's window, which caused him to inhale smoke through his open window.[10] The Board, however, finds the medical evidence inadequate to support a finding that appellant sustained a diagnosed medical condition causally related to the work incident. As noted by the Office, regardless of how much marijuana smoke was inhaled by appellant, there is no rational medical evidence of regard to establish the second component of fact of injury.[11] The record indicates that appellant suffered from hallucinations and anxiety on or after May 8, 2002, but there is no conclusive medical opinion stating that his alleged condition was due to the May 8, 2002 marijuana exposure as opposed to such preexisting conditions as post-traumatic stress disorder and alcohol abuse. Dr. Hamilton does not explain with any supporting medical rationale just how appellant's hallucinations resulted from his limited exposure to marijuana smoke, nor does she address the role of appellant's preexisting post-traumatic stress disorder to his alleged symptoms. The Board notes that, although appellant was hospitalized for depression and hallucination, there was no mention of the May 8, 2002 work incident contained in the discharge summary. Furthermore, the only medical test relevant to his marijuana exposure consisted of blood tests taken the day after the alleged exposure, which showed no levels of marijuana in appellant's body. Consequently, the Board concludes that the Office properly denied appellant's claim for compensation.

[8] *Id*.

[9] *Gloria J. McPherson, supra* note 7; *Ruby I. Fish*, 46 ECAB 276 (1994).

[10] An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. *See Edward W. Malaniak*, 51 ECAB 451 (2000).

[11] A claimant's burden of proof includes the submission of rationalized medical evidence, based on a complete factual and medical background, showing causal relationship. *See Calvin E. King*, 51 ECAB 394 (2000).

The decisions of the Office of Worker's Compensation Programs dated January 27, 2003 and August 27, 2002 are hereby affirmed.

Dated, Washington, DC
October 9, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member