U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES C. STATON and DEPARTMENT OF DEFENSE, ADMINISTRATIVE SUPPORT CENTER, Memphis, Tenn.

Docket No. 96-979; Submitted on the Record;
Issued January 23, 1998

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT, A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his right shoulder and biceps in the performance of duty on June 12, 1995.

On June 13, 1995 appellant, then a 61-year-old produce worker, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that he was loading boxes of carrots on a pallet at work and when he reached up to place a box of carrots up even higher, he turned his body around and heard two "snaps" in his right shoulder and biceps. The record shows that appellant stopped work on June 12, 1995, returned to work on June 22, 1995 and retired after almost three months of orthopedic physical therapy.

In a September 26, 1995 letter, the Office of Workers' Compensation Programs advised appellant to forward to the Office for review, all medical treatment notes, reports, and records of his injury within thirty (30) days from the date of its letter.

Appellant responded by submitting a faxed, unsigned medical report from the Hughston Clinic dated October 19, 1995, which indicated that appellant hurt his right shoulder lifting a box of carrots at work on June 12, 1995, and has been having persistent pain in spite of a conservative treatment program.

By decision dated November 15, 1995, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to support the fact of an injury in this case. In an accompanying memorandum, the Office noted that appellant was advised of the deficiency in his claim on September 26, 1995, and afforded an opportunity to provide supportive evidence; however, sufficient evidence to support the fact that appellant sustained an injury on June 12, 1995, had not been received.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury to his right shoulder and biceps in the performance of duty on June 12, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether a federal employee has 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 competent to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[4]

The second component of fact of injury 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, incident or exposure, the employee must submit rationalized medical opinion, based on a complete factual and medical background, supporting such a causal relationship.[5]

In the present case, there is no dispute that the incident occurred at the time, place and in the manner alleged by appellant. However, an injury resulting from this incident has not been established.

Appellant submitted a faxed, unsigned medical report from the Hughston Clinic dated October 19, 1995. This report, however does not constitute competent medical opinion evidence as it is devoid of a signed signature from a qualified physician and lacks proper identification. Therefore, this faxed report cannot be considered as probative evidence.[6] Furthermore, this report failed to establish a diagnosis; provide a discussion of appellant's job duties; provide a reasoned medical opinion attributing appellant's complaints to an injury sustained at work on

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[5] *Kathryn Haggerty*, 45 ECAB 383 (1994); *see also* 20 C.F.R. § 10.110(a).

[6] A medical report may not be considered as probative medical evidence if there is no indication that a qualified "physician" as defined in 5 U.S.C. § 8101(2) completed the report; *see also Barbara J. Williams*, 40 ECAB 649 (1989); *Bradford L. Sutherland*, 33 ECAB 1568 (1982).

June 12, 1995.[7] As such, the report is of diminished probative value and insufficient to establish fact of injury, or meet appellant's burden of proof.[8]

An award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment[9] or that work activities produce symptoms revelatory of an underlying condition[10] does not raise an inference of causal relationship between the condition and the employment factors. 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. Causal relationship must be established by rationalized medical opinion evidence.[11] As appellant failed to provide rationalized medical evidence establishing that he sustained an injury as a result of the June 21, 1995 employment incident, the Office properly denied appellant's claim for compensation.[12]

The decision of the Office of Workers' Compensation Programs dated November 17, 1995 is affirmed.

Dated, Washington, D.C.
January 23, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski

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

[8] *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[9] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[10] *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

[11] *Victor J. Woodhams*, *supra* note 3.

[12] Following the Office's November 17, 1995 decision, appellant submitted additional evidence not previously considered by the Office. The Board's jurisdiction, however, is limited to reviewing the evidence that was before the Office at the time of its final decision. The Board therefore has no jurisdiction to review any evidence submitted to the record after the Office's November 17, 1995 decision. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having such evidence considered by the Office as part of a reconsideration request.

Alternate Member