U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES T. HALL and DEPARTMENT OF THE NAVY, MARINE CORPS LOGISTICS BASE, Albany, Ga.

Docket No. 96-1011; Submitted on the Record;
Issued March 2, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury to his left arm in the performance of duty.

On October 25, 1995 appellant, then a 45-year-old material expediter, filed a traumatic injury claim, alleging that he had injured his left arm, while lifting items that weighed approximately 20 pounds off a paint rack with his left hand. In a decision dated November 29, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence failed to establish that an injury was sustained as alleged. In a merit decision dated January 17, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was insufficient to establish modification.

The Board has carefully reviewed the entire case record and finds that appellant has not met his burden of proof in establishing an injury to his left arm arising in the performance of duty.

A person who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.[2] In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident, or exposure

[1] 5 U.S.C. §§ 8101-8193.

[2] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a)

which is alleged to have occurred.[3] In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[6]

In the instant case, appellant submitted sufficient evidence to establish that the lifting incident occurred at the time, place and in the manner alleged. Therefore, the first component of fact of injury is established. However, appellant has not established that he sustained any injury, causally related to that incident. On October 25, 1995 appellant was examined by a registered nurse and a physician's assistant in the employing establishment health unit. They indicated that appellant had a possible ruptured biceps tendon in his left arm based on a history of having lifted 20-pound items the day before, his having no recollection of specific injury and his arising on October 25, 1995 with severe pain. This report cannot be construed as competent medical evidence, regarding the cause of appellant's claimed condition, since neither a nurse nor a physician's assistant is defined as a "physician" within the meaning of the Act. Therefore, their opinions as to diagnosis and causal relation do not constitute probative medical evidence in this regard.[7] The other medical evidence of record is from Dr. Damon R. Marsh, a Board-certified orthopedic surgeon and appellant's treating physician. Initially in office notes dated October 25, 1995, Dr. Marsh diagnosed a ruptured biceps tendon of the left elbow. Dr. Marsh performed surgery on October 31, 1995, to drain an abscess that developed on appellant's left elbow. Thereafter, Dr. Marsh changed his diagnosis to abscess of the left elbow and in office notes dated November 2, 1995, he indicated that the abscess was of undetermined etiology. In later notes, Dr. Marsh reported that culture on the abscess indicated that streptococcus sanguis was present. In a form medical report dated November 15, 1995, Dr. Marsh diagnosed an abscess of the left elbow and checked a box to indicate that the condition was related to the October 24, 1995 work incident. This form report is insufficient to sustain appellant's burden of proof as it is not rationalized. Dr. Marsh did not provide any explanation, or rationale for his opinion that the diagnosed medical condition was causally related to the October 24, 1995 incident. Therefore, this report is insufficient to meet appellant's burden of proof.[8] In a report dated December 19, 1995, Dr. Marsh reiterated his diagnosis and indicated that one possible explanation of the

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 3.803.2a (September 1980).

[4] *John C. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[5] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[6] *Manuel Garcia*, 37 ECAB 767 (1986).

[7] *Joseph N. Fassi*, 42 ECAB 677 (1991); *Betty G. Myrick*, 35 ECAB 922 (1984).

[8] *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

relationship between the diagnosed condition and the employment incident was that appellant had developed a hematoma after the incident which became infected. This report is speculative in nature, as Dr. Marsh indicated that this was one "possible" explanation of a causal relationship as opposed to definitively providing an explanation, for the development of the diagnosed condition. Therefore, this report cannot discharge appellant's burden of proof.[9] Appellant has not established that he sustained an injury, to his left arm while in the performance of duty on October 24, 1995.

The decisions of the Office of Workers' Compensation Programs dated January 17, 1996 and November 29, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 2, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[9] *Charles A, Massenzo*, 30 ECAB 844 (1978).