U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATRINA A. PAULSON and NATIONAL CIVILIAN COMMUNITY CORPS, CORPORATION FOR NATIONAL SERVICE, San Diego, CA

Docket No. 98-1664; Submitted on the Record;
Issued July 27, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has established entitlement to wage-loss compensation from July 29 to September 15, 1997.

On July 21, 1997 appellant, then a 22-year-old corps member, filed a claim for compensation alleging that on June 27, 1997 she injured her right knee while in the performance of duty. On September 12, 1997 appellant filed a claim for wage loss for 52 hours of lost work from July 29 to September 15, 1997.[1]

In a medical report dated August 20, 1997, Dr. Robert C. Hendler, Board-certified in orthopedic surgery, noted history of injury followed by appellant's arthroscopic procedure on July 28, 1997 and stated that upon examination appellant exhibited synovial plica and chondromalacia of the right knee. In a second medical report dated the same day, Dr. Hendler stated that if appellant strengthened her "quadriceps muscles, based on operative report, no further surgery or significant treatment will be needed." He also reviewed x-rays taken that day and stated that they revealed "no evidence of any fracture or dislocation," that the "[A]rticular surface of the patella appears to be free of any arthritic or degenerative changes" and that "[T]here is no evidence of any soft tissue calcifications present."

In a medical report dated September 19, 1997, Dr. David J. Chao, appellant's treating physician, Board-certified in orthopedic surgery, stated that he had treated appellant on July 18, July 22, September 4 and September 8, 1997; that a magnetic resonance imaging scan revealed a "tear in the medial meniscus-effusion right knee;" that the injury occurred as appellant related while at work; and that she could return to work without restrictions on September 1, 1997. Dr. Chao noted that he had referred appellant to see Dr. Hendler.

[1] Appellant was separated from the employing establishment on July 29, 1997.

By letter dated October 8, 1997, the Office advised appellant that it had accepted her claim for right meniscus tear, right chondromalacia patella and right knee arthroscopy. The Office noted that appellant was required to submit additional medical evidence to support any further claims for medical treatment. In a second letter dated the same day, the Office notified appellant that it could not process her claim for wage loss because the medical evidence failed to establish whether she had sustained any disability as a result of her work-related injury. The Office advised her to submit medical evidence that would support her claim for disability by showing time lost from work and a summary of the dates and hours to support the 52 hours of disability that she sought.

In a medical report dated September 19, 1997 and received by the Office on October 30, 1997, Dr. Chao stated that appellant was seven weeks post surgery and that she had full range of motion of the right knee with some trace of effusion. He also noted that her superior medial portal was "somewhat adherent to the skin, with mild dimpling." Dr. Chao then stated that appellant was "released to full duties, with no restrictions." He added that if appellant tolerated full duty for a month, he would "anticipate permanent and station[a]ry basis." Dr. Chao stated that he would see her in one month for a "final check." In a section entitled "treatment," he stated that appellant "will continue on home exercises."

In a letter decision dated January 14, 1998, the Office denied appellant's claim for wage loss on the grounds that the evidence failed to establish that appellant was disabled for the period sought. The Office noted that Dr. Chao's September 19, 1997 report stated that appellant was able to return to full duty as of September 1, 1997 and that no evidence was submitted to support appellant's disability from work from the date of the injury, June 26, 1997, to the date of surgery, July 28, 1997 and that no justification for 52 hours of alleged time off that appellant claimed in her September 12, 1997 claim had been submitted.[2]

The Board finds that appellant has failed to establish entitlement to wage-loss compensation from July 29 to September 15, 1997.[3]

An employee seeking benefits under the Federal Employees' Compensation Act[4] has the burden of establishing the essential elements of his or her claim[5] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[6] that the claim

[2] The Office noted that appellant was no longer associated with the employing establishment during the time period claimed for wage loss. Appellant was separated on July 29, 1997: her claimed time for wage loss was from that date.

[3] In a letter dated December 11, 1997, appellant notified the Office she wished to be reimbursed for costs associated with a car rental which was necessary for transportation to her doctor and to physical therapy sessions, both related to her work-related injury. On February 13, 1998 the Office authorized reimbursement for rental car use "for the period sought."

[4] 5 U.S.C. §§ 8101-8193.

[5] *See Daniel R. Hickman*, 34 ECAB 216 (1980).

[6] *James A. Lynch*, 32 ECAB 216 (1980).

was timely filed within the applicable time limitation period of the Act,[7] 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.[8]

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury" and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[9]

In the present case, the Office accepted appellant's claim for right meniscus tear, right chondromalacia patella and right knee arthroscopy. However, the Office notified appellant on October 8, 1997 that she would need to support her request for 52 hours of wage loss with medical evidence establishing that the time she claimed as sick leave was causally related to her work-related injury. The only evidence that appellant submitted subsequent to the Office's notice were medical reports from Dr. Chao wherein he stated that appellant was released to full duty but would remain on home treatment, and his recommendation to the Office that appellant be provided use of a rental car for medical visits and physical therapy trips. Appellant also submitted a December 11, 1997 letter to the Office for reimbursement of a rental car. None of this evidence supported appellant's claim that she was disabled for work from July 29 through September 15, 1997.[10] As appellant failed to submit such medical evidence, the Office properly denied her claim, and the Board concurs.

[7] 5 U.S.C. § 8122.

[8] *See Daniel R. Hickman*, *supra* note 5.

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[10] Appellant submitted a March 11, 1998 letter from a prospective employer noting that appellant was expected to work from August 1 through August 30, 1997 but was unable to do so because of her pending surgery. This letter is not probative regarding appellant's capacity to work during that time frame inasmuch as it is not a rationalized medical opinion from a physician establishing appellant's disability. 5 U.S.C. § 8101(2); *see generally Barbara J. Williams*, 40 ECAB 649, 657 (1988).

The decision of the Office of Workers' Compensation Programs dated January 14, 1998 is hereby affirmed.[11]

Dated, Washington, D.C.
July 27, 1999

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[11] The Board notes that subsequent to the Office's January 14, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).