U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of WILLIAM C. HARDISTY and DEPARTMENT OF THE NAVY, PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 98-2088; Submitted on the Record;*
*Issued March 1, 2000*

---

DECISION and ORDER

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

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury as alleged on January 10, 1997; and (2) whether the Office of Workers' Compensation Programs properly determined that appellant abandoned his request for a hearing under section 8124 of the Federal Employees' Compensation Act.

On May 12, 1997 appellant, then a 53-year-old equipment cleaner, filed a notice of traumatic injury and claim, alleging that he sustained injuries to his neck and lower back while dragging and rolling up hoses. Appellant stopped work on January 11, 1997.[1] In a decision dated July 1, 1997, the Office denied appellant's claim on the grounds that the evidence did not establish that he sustained an injury as alleged. By decision dated March 5, 1997, the Office notified appellant that he was deemed to have abandoned his request for a hearing.

The Board has duly reviewed the case record on appeal and finds that appellant did not establish that he sustained an injury on January 10, 1997 as alleged.

A person who claims benefits under the Act[2] 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.[3] 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

---

[1] On April 16, 1995 appellant sustained injuries to his neck and lower back while in the performance of duty. The Office accepted his claim for lumbar strain.

[2] 5 U.S.C. §§ 8101-8193.

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

experienced the employment incident or exposure, which is alleged to have occurred.[4] 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.[5] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[6] The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[7]

In the present case, appellant contended that he injured his neck and lower back while in the performance of duty. Although he indicated on his CA-1 form that Dotty Hillard was a witness to the alleged incident, he did not provide a witness statement from her. Similarly, he indicated that he complained of the incident to Mike Hansen and "Clark." However, a review of the record does not reveal a statement corroborating appellant's recitation of the cause of his claimed condition from either man. The first medical report of record is dated February 13, 1997 from Dr. Michael S. McManus, who is Board-certified in preventive medicine. He diagnosed exacerbation of chronic cervical pain, possible degenerative arthropathy or cervical spondylosis, exacerbation of chronic low back pain syndrome and major depressive disorder. The other medical evidence submitted by appellant is contemporaneous with the date of the filing of his claim.

While an injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action.[8] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[9] An employee has not met his or her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[10] However, an employee's statement alleging that an injury

[4] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995).

[5] *John J. 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).

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

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

[8] *Charles B. Ward*, 38 ECAB 667 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175 (1984).

[9] *Merton J. Sills*, 39 ECAB 572 (1988).

[10] *Tia L. Love*, 40 ECAB 586 (1989).

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.[11]

In the instant case, the employee's failure to provide corroborating evidence of the alleged incident, his late notification of the claimed injury and his failure to seek medical attention until over one month after the claimed incident casts serious doubt on the validity of his claim. By letter dated May 29, 1997, the Office requested additional information from appellant, including names and addresses of possible witness and details of his actions after the alleged incident. Appellant did not respond to this request. Therefore, as appellant's actions after the alleged injury of January 10, 1997 casts serious doubt on the validity of his claim and he did not avail himself of the opportunity to clarify his actions or submit corroborating evidence, he did not establish that he sustained an injury as alleged on January 10, 1997.

The Board also finds that the Office properly determined that appellant abandoned his request for a hearing.

Section 8124(b) of the Act[12] provides that a claimant not satisfied with a decision on his claim is entitled, upon timely request, to a hearing before a representative of the Office.[13] In the instant case, appellant made a timely *pro se* request for a hearing before an Office hearing representative by letter received July 28, 1997.

The Office has the burden of proving that it mailed to a claimant notice of a scheduled hearing. It is presumed, in the absence of evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that claimant. This presumption arises after it appears from the record that the notice was duly mailed and the notice was properly addressed.[14] Although appellant contends on appeal that he did not receive notification of the hearing, the record does not contain change of address information for appellant after his request for a hearing was filed and the January 28, 1998 notice was sent to his last address of record.

Thus a review of the record indicates that the Office mailed appellant a notice of hearing dated January 28, 1998 to his address of record and a copy of this letter is contained in the record. Therefore, as it appears from the record that the notice was duly mailed to appellant and that the notice was properly addressed, the presumption arises that appellant received notice of hearing.[15]

[11] *Robert A. Gregory*, 40 ECAB 478 (1989); *Carmen Dickerson*, 36 ECAB 409 (1985).

[12] 5 U.S.C. §§ 8101-8193.

[13] 5 U.S.C. § 8124(b).

[14] *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

[15] *Id.*

Section 10.137 of Title 20 of the Code of Federal Regulations provides in relevant part:

> "A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing…."[16]

Appellant did not appear at the scheduled February 25, 1998 hearing of which he had timely and proper notice, nor did he, within 10 days after the date of the hearing, give a reason for his failure to appear as required by the regulations. Therefore, the Office had sufficient reason to find that the request for a hearing had been abandoned.

The decisions of the Office of Workers' Compensation Programs dated March 5, 1998 and July 1, 1997 are hereby affirmed.

Dated, Washington, D.C.
March 1, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[16] 20 C.F.R. § 10.137(c); *see also* Federal (FECA) Procedure Manual, Part 2 – Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(d) and (e) (October 1992). The Board notes that under the procedure manual, the date of a request for the rescheduling of a hearing is determined by the postmark date.