U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK SABAT and U.S. POSTAL SERVICE,
POST OFFICE, Midflorida, FL

Docket No. 00-2643; Submitted on the Record;
Issued July 2, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof to establish that he sustained a back injury in the performance of duty.

On May 26, 2000 appellant, then a 42-year-old letter carrier, filed a notice of traumatic injury alleging that on April 29, 2000 he injured his lower back when he twisted around to lift a package from the back of his mail truck. He stopped work on May 2, 2000 and was released to full duty, without restrictions, on July 3, 2000.

By letter dated June 23, 2000, the Office of Workers' Compensation Programs requested additional medical and factual evidence from appellant stating that the initial information submitted was insufficient to establish that he sustained an employment-related back injury, as alleged. The Office explained to appellant that the submission of a physician's opinion, supported by medical explanation as to how the April 29, 2000 work incident caused or aggravated his claimed injury, was crucial to his claim. In response to the Office's request, appellant submitted copies of physical therapy treatment notes dating from May 11 to June 19, 2000, as well as three progress notes from his treating physician, Dr. Graham F. Whitfield, an orthopedic surgeon.

In a decision dated July 25, 2000, the Office denied appellant's claim as the medical evidence was not sufficient to establish that appellant sustained a back injury on April 29, 2000 in the performance of duty, as required by the Federal Employees' Compensation Act.[1] The Office found that there was no medical evidence submitted which discussed the causal relationship between appellant's diagnosed back condition and his employment.

The Board finds that appellant has failed to establish that he sustained a back injury in the performance of duty as alleged.

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[1] 5 U.S.C. §§ 8101-8193.

An employee seeking benefits under the Act 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 the injury was sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed is 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 an employee actually 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 component to be established is that the employee actually experienced the employment incident or engaged in the employment activities alleged to have occurred.[4] In this case, it is undisputed that appellant's job duties involved his twisting around to lift packages out of the back of his postal vehicle. The record also establishes that in early May 2000, appellant sought treatment for back pain.

The second component 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 claimed, as well as any attendant disability and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

In this case, while it is not disputed that appellant performed employment duties involving lifting items out of the back of his postal vehicle and that in May 2000 he was diagnosed with lumbosacral sprain, "p.s.m.s.," sacroiliitis and degenerative disc disease at L5-

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

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *James Mack*, 43 ECAB 321 (1991).

S1, the medical evidence is insufficient to establish that appellant's employment duties caused or otherwise contributed to his diagnosed conditions. The majority of evidence of record consists of physical therapy treatment notes. However, a physical therapist's reports are not medical evidence as a physical therapist is not a physician under the Act.[7] The record does contain progress notes dated May 11, June 5 and 19, 2000 from appellant's treating physician. In each of these notes, Dr. Whitfield documented appellant's complaints of low back pain, listed his findings on physical examination and diagnosed lumbosacral sprain, "p.s.m.s.," sacroiliitis and degenerative disc disease at L5-S1. However, he did not offer any opinion as to the cause of these diagnosed conditions or their relationship, if any, to appellant's employment activities. The Board notes that as the record contains no medical evidence which contains a rationalized medical opinion on the causal relationship, if any, between appellant's work duties and his diagnosed low back conditions, the medical evidence of record is insufficient to establish causal relationship[8] and, therefore, insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated July 25, 2000 is hereby affirmed.[9]

Dated, Washington, DC
July 2, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

[7] *Jennifer L. Sharp*, 48 ECAB 209 (1996); *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[8] *Lucrecia M. Nielsen*, 41 ECAB 583, 594 (1991).

[9] The Board notes that subsequent to the Office's July 25, 2000 decision, appellant submitted new medical evidence consisting of treatment notes dated May 4 and July 21, 2000 from Dr. Whitfield. He also included these two new medical reports with his appeal to the Board. The Board cannot consider this evidence, however, as the Board has no jurisdiction to review evidence for the first time on appeal that was not before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). Appellant may submit a request for reconsideration to the Office and ask that this new evidence be evaluated.