U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOE A. KELLY and DEPARTMENT OF THE AIR FORCE, DAVIS-MONTHAN AIR FORCE BASE, AR

Docket No. 01-63; Submitted on the Record;
Issued July 23, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty.

On June 28, 2000 appellant, a 47-year-old sheetmetal mechanic, filed a claim for benefits, alleging that he injured his back and neck when the vehicle he was driving suddenly stopped moving.

In support of his claim, appellant submitted seven clinic reports, which indicated that he had been treated periodically for his back and neck pain from July 7 through August 31, 2000 and a July 8, 2000 chiropractic report, which stated that he would be able to return to light-duty work on July 8, 2000. Appellant also submitted a form report, which indicated he had been treated on June 28, 2000 for pain in his back and neck a duty status report, which outlined physical restrictions stemming from the June 28, 2000 work accident and an undated report, which indicated findings on examination and noted appellant's complaints of moderate to severe pain in his cervical, thoracic and lumbar spine, radiating down to his left leg.

By letter dated July 25, 2000, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to determine whether he was eligible for compensation. The Office noted that chiropractic reports were not considered medical evidence pursuant to section 8101(2)[1] of the Federal Employees' Compensation Act[2] unless they contained a diagnosis of subluxation as demonstrated by x-ray. The Office asked appellant to submit a comprehensive medical report describing his symptoms, indicating a diagnosis of the condition and the medical reasons for his condition and opining whether his claimed condition was causally related to his federal employment. The Office requested that appellant submit the additional evidence within 30 days. Appellant did not submit any additional evidence.

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[1] 5 U.S.C. § 8101(2).

[2] 5 U.S.C. §§ 8101-8193.

By decision dated August 28, 2000, the Office denied appellant's claim, finding that he failed to submit medical evidence sufficient to establish that he sustained the claimed injury while in the performance of duty.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury while in the performance of duty on June 28, 2000.

An employee seeking benefits under the Act 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.[3] 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.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.[7]

In this case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence[8] and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on June 28, 2000 caused a personal injury and resultant disability.

In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[7] *Id.*

[8] *See John J. Carlone*, *supra* note 5.

between the two.[9] Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[10] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case.

Appellant submitted several reports from a chiropractor, none of which constituted medical evidence under the Act because they did not contain a diagnosis of subluxation demonstrated by x-ray. Although the Office requested that appellant submit appropriate, relevant medical evidence in support of his claim, appellant did not respond to this request.[11] Appellant, therefore, did not provide a medical opinion to describe or explain the medical process through which the June 28, 2000 work accident would have caused the claimed injury.

The August 28, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 23, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[9] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[10] *Id.*

[11] On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501.2(c).