U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEITH A. FULTON and DEPARTMENT OF THE ARMY, WOMACK ARMY MEDICAL CENTER, Fort Bragg, NC

Docket No. 03-1882; Submitted on the Record;
Issued October 23, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained a back injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for a merit review under 5 U.S.C. § 8128(a).

On August 4, 2002 appellant, then a 30-year-old paramedic, filed a claim alleging that on August 3, 2002 he was switching an oxygen tank in an ambulance and experienced a twinge in his back. Appellant stopped work on August 4, 2002 returned on August 8, 2002.[1]

In support of his claim, appellant submitted an attending physician's report from Dr. Marc Roy, a radiologist, dated August 4, 2002 which noted that appellant hurt his back while lifting an oxygen canister from his truck and diagnosed a lumbar strain. He noted with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity and advised that appellant could return to light duty with no heavy lifting on August 8, 2002. Dr. Roy further noted that findings upon physical examination revealed moderate tenderness along the upper lumbar spine and prescribed oral analgesics. He indicated on a disability certificate that appellant was examined on August 4, 2002 and sustained a work-related lumbar strain and could not return to work for three days. Appellant also submitted a note from Dr. Riley M. Jordan, a general practitioner, dated August 6, 2002 which advised that appellant would be out of work from August 6 to 13, 2002.

A witness statement from Larry Ake, Jr. dated August 12, 2002 advised that he assisted appellant in removing the oxygen tank from the truck and at no time did appellant indicate that he was hurt or did it appear that appellant injured himself.

[1] The statement from a witness advised that he did not see appellant actually get injured on August 3, 2002, but he indicated that appellant complained of back pain when first arriving at work that day. However, the record reflects that appellant hurt himself around 7:00 a.m. near the end of his shift on August 3, 2002 and reported back to work to begin his 11:00 p.m. shift on that same day.

In a letter dated August 29, 2002, the Office advised appellant of the type of factual evidence needed to establish his claim and requested he submit such evidence.

In a decision dated October 2, 2002, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on August 3, 2002. The Office found that the initial evidence of file was insufficient to establish that appellant experienced the claimed incident on August 3, 2002.

In an undated letter that was received by the Office on March 3, 2003, appellant requested reconsideration of the decision dated October 2, 2002. Appellant advised that he was initially seen on August 3, 2002 for his injury and approximately five times thereafter. He indicated that he was unable to provide the proper medical documentation in support of his claim because the employing establishment refused to provide the forms indicating that they were unnecessary.

By decision dated April 4, 2003, the Office denied appellant's reconsideration request on the grounds that the evidence submitted was immaterial in nature and insufficient to warrant review of the prior decision.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or his claim including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation 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."[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or 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 which is alleged to have occurred.[4] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

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

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

must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[7]

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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[8] Although an employee's statement alleging that an injury 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,[9] an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.[10]

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, as well as any attendant disability, claimed 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.[11]

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 the 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.[12]

Although there appear to be conflicting witness statements as to whether appellant was injured as a result of lifting the oxygen tank the evidence supports that appellant did in fact lift the oxygen tank on August 3, 2002. Specifically, the statement from Mr. Ake, appellant's co-worker, advised that he assisted appellant in removing the oxygen tank from the truck on August 3, 2002. Additionally, appellant has provided a consistent history of the injury as reported on medical reports including the attending physician's report and emergency room

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *Id.* at 255-56.

[8] *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

[9] *Robert A. Gregory*, 40 ECAB 478 (1989).

[10] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

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

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

records prepared by Dr. Roy on August 4, 2002, all of which note that appellant was lifting a canister on August 3, 2002 and thereafter complained of back pain. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and thus has established that he experienced the employment incident on August 3, 2002.

In the instant case, the Office denied appellant's claim for compensation on the grounds that the medical evidence was not sufficient to establish that appellant's medical condition of lumbar strain was causally related to his employment. However, the Board notes that the medical evidence submitted by appellant generally supports that he sustained a lumbar strain from lifting an oxygen tank. Specifically, the attending physician's report from Dr. Roy dated August 4, 2002 noted that appellant hurt his back while lifting an oxygen canister from his truck and a lumbar strain. He indicated with a check mark "yes" that appellant's condition was caused or aggravated by an employment activity and advised that appellant could return to light duty with no heavy lifting on August 8, 2002. Dr. Roy further noted that findings upon physical examination revealed moderate tenderness along the upper lumbar spine and prescribed oral analgesics. He indicated on a disability certificate that appellant was examined on August 4, 2002 and sustained a work-related lumbar strain and could not return to work for three days. The emergency room notes indicated that appellant experienced a twinge in his back after removing a cylinder from his truck and advised that he experienced radiating pain and had difficulty ambulating. Although these physician's opinions are not sufficiently rationalized[13] to carry appellant's burden of proof in establishing his claim, they stand uncontroverted in the record and are, therefore, sufficient to require further development of the case by the Office.[14]

In view of the above evidence, the Office should have referred the matter to an appropriate medical specialist to determine whether appellant may have sustained a lumbar strain as a result of his employment duties.

Proceedings under the Act are not adversary in nature nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence. It has the obligation to see that justice is done.[15] Accordingly, once the Office undertakes to develop the medical evidence further, it has the responsibility to do so in the proper manner.

Therefore, the Board finds that the case must be remanded to the Office for preparation of a statement of accepted facts concerning appellant's working conditions and referral of the matter to an appropriate medical specialist, consistent with Office procedures, to determine whether appellant may have sustained a lumbar strain as a result of performing his employment

[13] *See George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[14] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

[15] *John W. Butler*, 39 ECAB 852 (1988).

duties. Following this, and any other further development as deemed necessary, the Office shall issue an appropriate merit decision on appellant's schedule award claim.[16]

The decision of the Office of Workers' Compensation Programs dated October 2, 2002 is hereby set aside and the case is remanded for further development in accordance with this decision of the Board.

Dated, Washington, DC
October 23, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[16] In view of the Board's disposition of the merit issue in the claim, it is not necessary to address whether the Office properly denied a merit review of appellant's claim.