U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HUMBERTO SARMIENTO and DEPARTMENT OF THE TREASURY, CUSTOMS SERVICE, Hidalgo, TX

Docket No. 01-1743; Submitted on the Record;
Issued April 2, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On January 31, 2001 appellant, then a 30-year-old customs inspector, filed a notice of traumatic injury and claim for compensation, alleging that on January 31, 2001 as a result of ground fighting with a classmate during a "redman" physical training session, he developed a neck strain. A witness statement from Mary Ann Olejnik indicated that appellant had just completed the redman exercise when he complained of pain in his neck, upper chest and upper back and was escorted to health services. On the reverse side of the CA-1 form, appellant's supervisor noted that he was notified of the incident on February 1, 2001 and noted that appellant did not stop work. He checkmarked "yes" that appellant was injured in the performance of duty.[1]

In support of his claim, appellant submitted February 9, 2001 health unit patient visit data reports from the employing establishment of his January 31, 2001 visit. The report indicated that appellant complained of an injury to his neck, upper back and chest "while participating in redman exercise." Jerry Nicklay, a physician's assistant, diagnosed appellant with acute cervical strain and treated him with a neck collar, ibuprofen and Robaxin. Mr. Nicklay referred appellant to the emergency room for further evaluation and treatment.

Appellant also submitted a February 9, 2001 work restriction memorandum from the employing establishment's medical officer/physician's assistant to appellant's physical training instructor modifying and restricting appellant's training duties.

[1] The Board notes that appellant submitted new medical evidence subsequent to the Office of Workers' Compensation Programs' decision. However, the Board's jurisdiction is limited to a review of the evidence before the Office at the time of its final decision. Therefore the Board cannot consider that evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

By letter dated February 28, 2001, the Office requested that appellant and the employing establishment submit additional evidence including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated his claimed injury.

In response, a copy of appellant's CA-1 form was submitted.

By decision dated March 30, 2001, the Office denied appellant's claim for compensation on the grounds that appellant failed to establish fact of injury. The Office specifically found that the evidence was sufficient to establish that appellant actually experienced the claimed incident; however, there was insufficient medical evidence to establish that a condition had been diagnosed in connection with the accepted work incident.

The Board finds that appellant failed to establish a causal relationship between his January 31, 2001 acute cervical strain and his employment-related incident.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 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 essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he 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 personal injury.[6] The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

In the instant case, the Office concluded that the evidence of record was sufficient to establish that the claimed incident occurred on January 31, 2001 as alleged. Because 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,[7] the Board

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] *Elaine Pendleton, supra* note 3.

[6] *Id*.

[7] *Linda S. Christian*, 46 ECAB 598 (1995).

finds that the work-related physical training incident occurred on January 31, 2001, as alleged. However, the Board also finds that appellant has submitted insufficient evidence to establish a causal relationship between his acute cervical strain and the employment incident on January 31, 2001.

To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.[8]

In support of his claim, appellant submitted health unit patient visit data reports from a physician's assistant. The Office found that Mr. Nicklay's January 31, 2001 reports have no probative value as causal relationship is a medical issue and he is not considered a physician under the Act[9] and, therefore, is not competent to render a medical opinion.[10] He merely provided a history of the January 31, 2001 employment incident and noted his diagnoses and treatment recommendations. No other evidence of record establishes a causal relationship between appellant's alleged employment injury.

The medical evidence submitted to support appellant's claim does not establish a causal relationship between his January 31, 2001 employment-related incident and his accepted employment injury. The health unit reports dated January 31, 2001 did not conclude that appellant's acute cervical strain was causally related to his work duties and did not contain a rationalized medical opinion.

Despite being advised of the deficiencies in his medical evidence, appellant failed to submit a rationalized opinion addressing the issue of causal relationship and, therefore, failed to establish fact of injury. As appellant has failed to establish fact of injury, he is not entitled to compensation.

[8] *See Victor J. Woodhams, supra* note 4.

[9] *Supra* note 2.

[10] *John H. Smith*, 41 ECAB 444 (1990).

The decision of the Office of Workers' Compensation Programs dated March 30, 2001 is hereby affirmed.

Dated, Washington, DC
April 2, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member