U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD S. FOWLER, JR. and DEPARTMENT OF THE NAVY, NAVAL UNDERSEA WARFARE CENER DIVISION, Keyport, WA

Docket No. 00-243; Submitted on the Record;
Issued March 19, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

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

On July 22, 1998 appellant, then a 41-year-old ordnance equipment worker leader, filed a notice of traumatic injury alleging that on July 22, 1998, while lifting wood, he injured his left elbow. Appellant did not stop working.

Appellant submitted July 30 and November 5, 1998 attending physician form reports from Dr. William O. Walcott, a Board-certified family practitioner, who diagnosed left lateral epicondylitis and checked a box "yes" that appellant's condition was work related. Appellant also forwarded medical and physical limitation reports from Dr. Michael S. McManus, Board-certified in occupational medicine. These reports were dated from January 28 to March 26, 1999. Dr. McManus noted that appellant was suffering from pain and tenderness in his left elbow, caused by repetitive loading and unloading of truck and repetitive blocking and bracing of explosives or ammunition for transportation. Dr. McManus diagnosed chronic, moderate-to-severe left lateral epicondylitis, which he opined to be work related. He also ordered a x-ray of appellant's left elbow, which was performed January 28, 1999. Dr. Dennis L. Buschman, a Board-certified radiologist, reported that two views of appellant's elbow indicated that there was no significant bone, joint or soft tissue pathology. In a March 16, 1999 report, Dr. Brian O. Wicks, a Board-certified orthopedic surgeon, requested authorization for a left lateral epicondylar release and anconeus muscle flap. He stated that he found no etiology for appellant's condition other than lateral epicondylitis.[1]

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[1] Evidence of record also includes medical and physical limitation reports dated July 30, November 5 and 13 and December 9, 1998, signed by J.A. Stewart, P.A.-C. These reports, however, cannot be considered competent medical evidence and have no probative value to establish appellant's claim, as a physician's assistant is not considered a "physician" within the meaning to the Federal Employees' Compensation Act. *See Robert J. Krstyen,* 44 ECAB 227 (1992); *Guadalupe Julia Sandoval,* 30 ECAB 1491 (1979).

By letter dated June 2, 1999, the Office of Workers' Compensation Programs advised appellant of the additional medical and factual evidence needed to support his claim. In particular, appellant was advised to provide a physician's opinion, with medical reasons for such opinion, as to how the work caused or aggravated the claimed injury. No response was forthcoming.

By decision dated July 26, 1999, the Office denied appellant's claim. The Office found that the medical reports did not explain how the claimed incident, lifting wood on July 22, 1998, caused or contributed to the diagnosed lateral epicondylitis. The Office found that appellant did not meet his burden of proof in establishing that he sustained an injury in the performance of duty on July 22, 1998.

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury to his elbow in the performance of duty on July 22, 1998.

An employee seeking benefits under the Act[2] 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 limitations 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 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]

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.[5]

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.[6]

In this case, it is not disputed that appellant is an employee, or that he was engaged in lifting wood on July 22, 1998. However, there is insufficient medical evidence to establish that

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[2] 5 U.S.C. §§ 8101-8193.

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

[4] *Daniel J. Overfield,* 42 ECAB 718, 721 (1991); *Victor J. Woodhams,* 41 ECAB 345 (1989).

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

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

he sustained an injury to his elbow on July 22, 1998. The medical reports appellant submitted establish the diagnosis of lateral epicondylitis, but they contain insufficient medical rationale explaining how lifting wood on July 22, 1998 caused or contributed to his diagnosed condition.

In the instant case, there is insufficient medical evidence to establish that the claimed condition is due to factors of appellant's employment. While the reports from Dr. McManus address the causal relationship between appellant's July, 1998 injury and his elbow condition, they do note that appellant was complaining of pain previous to July 1998. Furthermore, Dr. McManus did not explain how and why lifting wood caused or aggravated appellant's condition. Without any medical rationale supporting the physician's conclusions, his opinion is insufficient to establish appellant's claim. Additionally, although appellant did submit reports from Dr. Walcott, these reports are insufficient. Although Dr. Walcott's July 30 and November 5, 1998 reports supported causal relationship with a checkmark, the Board has held that a checkmark in support of causal relationship is insufficient to establish a claim in the absence of medical rationale explaining the basis of his decision.[7] No medical rationale supporting the physician's causal relationship opinion is contained in the reports.

As noted above, part of appellant's burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As he has not submitted medical evidence establishing that the July 22, 1998 incident caused an injury, he has not met his burden of proof.

[7] *Alberta S. Williamson,* 47 ECAB 569 (1996).

The decision of the Office of Workers' Compensation Programs dated July 26, 1999 is affirmed.[8]

Dated, Washington, DC
March 19, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

[8] Claimant did submit medical reports and work records after the Office issued its decision. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.