U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THEDORA BOWLEG and U.S. POSTAL SERVICE,
HOLLYWOOD UNIT, Miami, Fla.

Docket No. 96-357; Submitted on the Record;
Issued January 16, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on January 26, 1994, as alleged.

On January 26 1994 appellant, then a 43-year-old postal distribution clerk, filed a notice of traumatic injury (Form CA-1) alleging that on January 26, 1994 her right arm and fingers became swollen and numb. Appellant stated that her arm started hurting when she was "writing" and that it also hurt when she was "doing Dale labs mail." A witness' statement on the bottom of the Form CA-1 stated that appellant reported that she was in pain, and that she massaged appellant's shoulder and upper arm for about five minutes and gave her two tylenol. The witness further stated that appellant appeared to be in a lot of pain.[1] Appellant did not stop work.

In a February 3, 1994 CA-16 form report issued to "Hollywood Medical," a physician, whose signature is not legible, indicated that appellant was treated on February 3, 1994 for right shoulder and neck pain which appellant stated arose from lifting a bucket of film. The physician diagnosed cervical and right shoulder strain, attributed the condition to the employment activity described, and referred appellant to physical therapy. In the accompanying duty status report (Form CA-17) of the same date, appellant was placed on light-duty work effective February 3, 1994.

In a February 4, 1994 report, a physical therapist indicated that appellant gave a history of injury on January 16, 1994 when she was lifting a bucket of film weighing 10 to 15 pounds with her right upper extremity. The physical therapist recommended that appellant return to light-duty work with limited use of the right hand and a five-pound lifting restriction.

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[1] A xerox copy of the CA-1 form reflects a second witness' statement dated January 28, 1994, in which the witness wrote that appellant's right hand was slightly swollen on January 26, 1994.

In a letter dated February 22, 1994, the employing establishment stated that, as appellant had a five-pound lifting restriction,[2] her duties did not require lifting over the amount indicated by her physician.

In a March 25, 1994 letter, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical evidence. The Office particularly requested that appellant explain how the claimed injury occurred and that she provide a physician's rationalized report addressing the cause of her condition.

In a decision dated May 18, 1994, the Office denied appellant's claim because fact of injury was not established. In the accompanying memorandum, the Office found that there was conflicting evidence regarding whether the claimed event occurred in the manner alleged as there was conflicting histories of the date and nature of the circumstances to which injury was attributed. The Office found that as appellant was currently under a five-pound lifting restriction, if the incident of appellant lifting a bucket of film did occur, it was not within any duty required in the performance of her job.

Appellant subsequently requested reconsideration. In a letter dated May 2, 1995, appellant asserted that she never alleged that her injury occurred while she was "writing" and referred to Forms CA-16 and CA-17 as support for the proposition that the injury occurred while "lifting a bucket of film." Appellant asserted that she noticed she injured herself while lifting the bucket of film and later in the day while she was writing, but that she did not injure herself while writing. Appellant further asserted that lifting of the bucket of film occurred within her performance of duty as she was given a direct order by postal management to perform the lifting and, therefore, she complied even though she was on a five-pound lifting restriction from a prior injury. The employing establishment submitted statements from three of appellant's supervisors which stated that appellant was never instructed to work or lift outside her restrictions. One statement, from a supervisor whose last name is illegible, stated that appellant would go over to Dale Labs table and weigh each piece [of mail] and write the amount on each. The supervisor stated that appellant was never instructed to work at the Dale Labs table and, when asked who instructed her to work there, appellant stated that she did it to help out. The supervisor advised appellant not to help out until she was instructed to.

In a decision dated August 8, 1995, the Office reviewed the case on its merits and denied modification of its earlier decision. In the accompanying memorandum, the Office found that the evidence of record establishes that appellant experienced right upper extremity complaints while writing at work on January 26, 1995. The Office further found that the evidence did not establish that the mechanism of injury was appellant's lifting a bucket of film (weighing 15 to 20 pounds). The Office noted that, at the time of the alleged incident, appellant was on medically imposed work limitations which included no lifting over five pounds. The Office stated that appellant was inconsistent in her reasons for violating her medically imposed restriction; first

[2] The record indicates a treatment note dated January 11, 1994 from Dr. Paul B. Chaplin concerning the status of an open acromioplasty on the left shoulder from January 1993. Within the treatment notes Dr. Chaplin recommends light-duty work with no lifting over five pounds with the right upper extremity. The record indicates that appellant had other injury claims before the Office prior to the filing of the January 26, 1994 claim.

saying that she lifted because of a coworker's refusal to assist, and, then, because of a direct order from a supervisor. The Office found that appellant failed to identify the other party alleged to have been involved and contrary evidence exists from her supervisors. The Office further reiterated that the medical evidence was deficient to establish the claim as the only medical opinion which attributed the condition to the activity failed to explain how the activity caused the injury.

The Board finds that appellant has failed to establish that she sustained an employment injury on January 26, 1994, as alleged.

An employee seeking benefits under the Federal Employees' Compensation 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 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 is 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 occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of his 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.[5]

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] 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 must be consistent with the surrounding facts and circumstances and his subsequent course of action.[8] 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.[9] The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative, and substantial

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

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

[5] *John J. Carlone*, 41 ECAB 354, 356 (1989).

[6] *See Pendleton, supra* note 3.

[7] *See Carlone*, supra note 5.

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

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

evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.

The Office has denied the claim on the grounds that the January 26, 1994 incident is not established and on the grounds that the medical evidence is insufficient to establish that employment factors caused or aggravated her claimed condition. The Office found that appellant was inconsistent in her account of the claimed injury and that there was conflicting evidence about the incident. The Board notes that appellant's statement on her January 26, 1994 CA-1 form, that she felt pain while writing and "doing Dale Labs mail," and the history of injury contained in the initial medical reports, that she was injured while lifting buckets of film, seem inconsistent. However, appellant subsequently indicated that the Dale Labs work involved lifting buckets or bags of mail or film. This is undisputed. The Office noted that appellant's supervisors indicated that she was on a five-pound lifting restriction and that she had once been instructed not to work at the Dale Labs table after she was seen working at such table. However, this is insufficient to establish that appellant did not lift buckets or bags of mail at the Dale Labs table on January 26, 1994 as alleged. The fact that she may have been instructed not to lift over five pounds or not to work at the Dale Labs table is insufficient to establish that she did not lift buckets as alleged. None of the supervisors who provided statements purport to have observed appellant at the time of the alleged incident. As appellant's account of the claimed incident is essentially consistent with the facts of the case and her subsequent course of action, the Board finds that there are no sufficient discrepancies in the evidence to create serious doubt that the lifting and writing incidents occurred as alleged on January 26, 1994. Consequently, the Board finds that the claimed incident occurred as alleged.

However, the medical evidence of record is insufficient to establish that the January 26, 1994 incident caused an injury. The medical evidence required to establish a causal relationship between the identified employment factors alleged and the presence or occurrence of the disease or condition, generally, is rationalized medical opinion evidence.[10] 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. In this case, appellant has submitted medical evidence by way of a CA-16 form which was issued to an emergency medical facility, and physical therapy reports and notes dated February 3, 1994. A review of the medical evidence supports a history of injury occurring when appellant lifted a "bucket of film," but fails to explain why lifting a bucket of mail caused or aggravated the diagnosed cervical and right shoulder strain. Inasmuch as the physician failed to present the medical rationale necessary to support his opinion that appellant's condition was causally related to her employment factors, the medical evidence is insufficient to support appellant's claim. Other medical evidence submitted also does not explain why writing or lifting on January 26, 1994 would cause or aggravate a specific condition.[11]

[10] *See Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959).

[11] Appellant submitted notes from a physical therapist. As a physical therapist is not a physician for the purposes of the Act, these notes do not constitute medical evidence and are insufficient to establish appellant's claim. *See Barbara J. Williams*, 40 ECAB 649 (1989); *see also Jane A. White*, 34 ECAB 515 (1983); 5 U.S.C. § 8101(2).

For these reasons, appellant, therefore, has failed to meet her burden of proof.

The Board notes, however, that it appears appellant may be entitled to reimbursement for evaluation and treatment pursuant to the CA-16 form issued by the employing establishment on February 2, 1994 which authorized treatment by "Hollywood Medical." The Board has held that where an employing establishment, pursuant to the Office regulations, authorizes medical treatment or a medical examination as a result of an employee's claim of sustaining an employment-related injury, a contractual obligation is created which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.[12] The record does not indicate that there has been reimbursement. Upon return of the case record, the Office shall make appropriate reimbursement for examinations authorized pursuant to this form.

The decision of the Office of Workers' Compensation Program dated August 8, 1995 is affirmed.

Dated, Washington, D.C.
January 16, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

[12] *Pamela A. Harmon*, 37 ECAB 263, 264-65 (1986); *Frederick J. Williams*, 35 ECAB 805 (1984).