U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHERYL LYNN HALE and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Pittsburgh, Pa.

Docket No. 96-1697; Submitted on the Record;
Issued July 8, 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 to her lower back and both knees in the performance of duty on August 2, 1995.

On October 23, 1995 appellant, then a 43-year-old food service worker, filed a notice of traumatic injury claim for continuation of pay/compensation (Form CA-1), and a claim for compensation on account of traumatic injury or occupational disease beginning August 23, 1995 through January 16, 1996 (Form CA-7). Appellant alleged that she sustained a work-related injury to her lower back and both knees in the performance of duty on August 2, 1995. Appellant stated:

> "I was in a meeting. When I was getting ready to ask a question and stood up, I had trouble standing and my knees buckled under me. I went to sit back down and I fell on the floor because I was having trouble sitting back down and the chair was too far behind me. I fell on the floor, injuring my lower back and also felt pains in both my legs. The next day, August 3, 1995, felt back pain. Legs tingling and knees gave out from under me. I did not fall all the way to the floor because an employee caught me before hitting the ground."

The record shows that appellant intermittently lost time from work beginning August 3, 1995 until September 4, 1995, and that a fitness for duty was performed on her. As a result, appellant was placed on disability retirement by her employing establishment on September 1, 1995.

By letters dated November 8, 1995, February 5 and March 15, 1996, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office noted that appellant had previously filed 15 or 16 claims for injuries to her knees and back. Five of these

claims were accepted for contusions of the knee, and a May 26, 1991 injury, resulted in a

lumbosacral strain to appellant's back. The Office also noted that appellant was able to return to work on September 6, 1991 and did not receive any further medical treatment until March 1993.[1]

In a decision dated April 25, 1996, the Office denied appellant's claim for benefits on the grounds that the evidence of file failed to demonstrate a causal relationship between the injury and the claimed condition or disability. The Office noted that appellant had a history of back and knee injuries and that the medical records of file indicated that appellant suffered from degenerative disc disease, osteoarthritis and obesity.

The Board has duly reviewed the case record in the present case and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet her burden of proof in establishing that she sustained an injury to her lower back and both knees in the performance of duty on August 2, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that the essential elements of his or her claim[3] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[4] that the claim was timely filed within the applicable time limitation period of the Act,[5] 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.[6] 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.[7]

In order to determine whether a federal employee has sustained a traumatic 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. 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.[8] Second, the employee must submit sufficient evidence to establish that the

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[1] The record shows that appellant saw Dr. Robert G. Liss, a Board-certified orthopedic surgeon on October 11, 1991 for a recurrence of lower back pain and was instructed to remain off work and attend physical therapy. Appellant was instructed to follow-up with Dr. Liss, in one week, but did not return until March 5, 1993.

[2] 5 U.S.C. §§ 8101-8193.

[3] *See Daniel R. Hickman,* 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[4] *See James A. Lynch,* 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[5] 5 U.S.C. § 8122.

[6] *See Melinda C. Epperly,* 45 ECAB 196 (1993); *Joe Cameron,* 42 ECAB 153 (1989); *Elaine Pendleton,* 40 ECAB 1143 (1989).

[7] *David J. Overfield,* 42 ECAB 718 (1991); *Delores C. Ellyett,* 41 ECAB 992 (1990); *Victor J. Woodhams,* 41 ECAB 345 (1989).

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

employment incident caused a personal injury.[9] An employee may establish that an injury occurred in the performance of duty as alleged but fails to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[10]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or condition.[11] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[12]

In this case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, there is no rationalized medical opinion evidence to support the fact that appellant suffered an injury or disability causally related to any specific work factors. Appellant submitted an authorization for examination and/or treatment (Form CA-16) dated August 3, 1995, and on the reverse side of this form is a report dated August 15, 1995, from Dr. Robert G. Liss, a Board-certified orthopedic surgeon which noted that he treated appellant on August 4, and 5, 1995.[13] Dr. Liss presented the history of appellant's injury as "reoccurrence low back pain [and] both knee give out," but checks a "No" box to the question of whether there is any history or evidence of concurrent or pre-existing injury. Dr. Liss also noted that his finding are "chronic lower back pain related to previous work injury, bilateral knee osteoarthritis, nonwork related." He prescribed physical therapy for the lower back and a magnetic resonance imaging (MRI) scan. He indicated that the permanent effects of appellant's condition was undetermined.

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

[10] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury *i.e.,* a physical impairment resulting in the loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[11] *See Elaine Pendleton*, *supra* note 6.

[12] *See Carlone*, *supra* note 8.

[13] The Board notes that the Office improperly referred to appellant's Form CA-16, authorization for examination and/or treatment and medical expenses dated August 3, 1995, and signed by Dr. Robert G. Liss, a Board-certified orthopedic surgeon on August 15, 1995, as a Form CA-20, an attending physician's report. The Board has held that where an employing establishment, pursuant to the Office regulations, authorized medical treatment or a medical examination, by means of a properly executed Form CA-16, 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; *see John J. Carlone*, 41 ECAB 354(1989); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.4024(b). In this case the employing establishment issued a Form CA-16 to appellant on August 3, 1995. This form was signed on the reverse side, by Dr. Liss on August 15, 1995. It is unclear from the record, however, whether any medical bills have been paid pursuant to this Form CA-16 authorization; *see* 20 C.F.R. §10.130.

On October 2, 1995, appellant saw Dr. Peter Z. Cohen, a Board-certified orthopedic surgeon as recommended by Dr. Liss. Dr. Cohen presented the history of appellant's condition and noted that appellant had revealed to him that she was under the care of an employee health physician from her employing establishment. He noted that appellant was taken off work because of the injuries to her back, hips and knees on September 1, 1995. On examination, Dr. Cohen noted that appellant had pain on motion, bilateral crepitance, minimal effusions, tenderness subpatellar as well as joint lines, and that x-rays showed DJD [degenerative joint disease] of her knees bilaterally and tricompartment moderate. Dr. Cohen then opined that appellant had no gross instability and ambulates with a cane due to the accumulation of problems with her back, hips and knees. He diagnosed appellant with DJD in both knees with status post trauma to both knees.

In a medical report dated November 22, 1995, Dr. Liss presented the history of appellant's medical condition from May 30, 1991 to the present. He indicated that appellant's back was restudied by an MRI scan in August of 1995 and showed some degenerative signal change at the L3-4 disc, no focal disc protrusion. He noted that there was no spinal stenosis in his review. Dr. Liss then diagnosed appellant with S/P [status post] lumbar sprain with degenerative disc disease L3-4, degenerative arthritis in both knees and morbid obesity. He opined that appellant's condition would probably remain the same unless she lost a significant amount of weight or undergo some sort of knee replacement surgery and whether or not this would return appellant to capacity was unknown. Dr. Liss went on to note that he had outlined the times that he placed appellant on disability for her back, and indicated that appellant had been instructed not to work by a physician at her employing establishment. Dr. Liss stated: "I believe that her [appellant's] knee arthritis does limit her from capacity to stand for long periods, climb stairs and get up and down from a chair." Furthermore, in a medical report dated February 14, 1996, Dr. Liss noted that appellant had a preexisting condition of degenerative disc disease L3-4, degenerative arthritis in both knees and morbid obesity. He moreover indicated that these conditions were non-work related and stated that "I am sure that Ms. Hale's [appellant's] knee arthritis was a contributing factor in the episode which occurred on August 2, 1995.

While the medical report of Dr. Liss dated February 14, 1996 provided some support in establishing that appellant's condition was aggravated by the August 2, 1995, incident, he does not present an actual awareness of the incident, or otherwise, explain how and why the August 2, 1995 incident would cause, aggravate or contribute to the presence or occurrence of a specific medical condition.[14] Therefore, none of the medical evidence submitted by Dr. Liss is sufficient to establish appellant's claim for benefits.

Furthermore, none of the medical evidence of record, is relevant to the main issue in the present case, *i.e.*, whether appellant has submitted sufficient medical evidence to support her claim that she sustained an injury to her lower back and both knees as a result of the August 2,

[14] *Charles H. Tomasezewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

1995, incident.[15] Appellant was advised of the deficiency in her claim and afforded an opportunity to provide supportive evidence, however, no medical evidence addressing whether any medical condition arose out of the incident of August 2, 1995, was submitted by appellant. Consequently, appellant has not met her burden of proof in establishing that she sustained an injury to her lower back and both knees in the performance of duty on August 2, 1995.

[15] *See Victor J. Woodhams*, *supra* note 7.

The decision of the Office of Workers' Compensation Programs dated September 25, 1995 is affirmed.

Dated, Washington, D.C.
July 8, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member