U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN A. PETTY and U.S. POSTAL SERVICE,
STATION B POST OFFICE, Buffalo, N.Y.

Docket No. 96-1664; Submitted on the Record;
Issued June 1, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that she sustained a back condition in the performance of duty.

On February 1, 1993 appellant, then a 38-year-old letter carrier, filed a notice of traumatic injury, claiming that while lifting a container of magazines on August 15, 1992 she experienced extremely intense pain in her back and almost blacked out. Appellant stopped work but returned to limited duty on September 28, 1992.

In support of her claim appellant submitted several form reports from her treating physician, Dr. Sylvia H. Regalla, a practitioner in internal medicine, who stated that appellant fell on ice while delivering mail and diagnosed chronic lumbar strain.[1] Appellant also submitted reports from a physical therapist and the results of a computerized tomographic (CT) scan dated June 18, 1993, which showed no focal disc herniation and moderate facet arthropathy at L4-5 and L5-S1 bilaterally.

On March 26, 1994 the Office of Workers' Compensation Programs informed appellant that the medical evidence was insufficient to support her claim in that Dr. Regalla's April 29, 1993 report did not discuss the August 15, 1992 injury, the CT scan was only a diagnostic test, and the physical therapist's reports had no probative value because he was not a physician. The Office explained the necessity of a rationalized medical opinion.

On May 10, 1994 the Office denied the claim on the grounds that appellant had failed to establish the fact of an injury. The Office noted that no further evidence had been received.

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[1] On February 1, 1992 appellant filed a notice of traumatic injury, claiming that she hurt her back when she slipped and fell on ice while delivering mail. The claim was accepted for a lumbar strain. On October 3, 1992 appellant filed a notice of recurrence of disability. This claim was denied on March 23, 1993 and again on January 25, 1994 and was not further appealed.

Appellant timely requested a written review of the record and submitted an April 18, 1994 report from Dr. Regalla, who stated that appellant had developed a sudden onset of sharp and severe pain on August 15, 1992 while lifting a heavy crate of magazines and was first seen on August 17, 1992 when Dr. Regalla diagnosed muscle spasm and back sprain. Dr. Regalla treated appellant "multiple times" over the next two years for persistent back pain, which the physician attributed to the August 1992 injury. Dr. Regalla recommended a magnetic resonance imaging (MRI) scan and stated that appellant could work with moderate restrictions.

In a decision dated August 16, 1994, the Office's hearing representative denied the claim on the grounds that appellant had failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty. The hearing representative found that while Dr. Regalla opined that appellant's back condition was caused by the lifting incident at work, she provided no medical rationale for this conclusion.

Appellant timely requested reconsideration and submitted a November 28, 1994 report from Dr. Regalla who reiterated the history of appellant's injury and stated that appellant "developed limping" after carrying mail for three hours. Dr. Regalla added that appellant complained of "daily pain" during her most recent office visit on September 26, 1994. Dr. Regalla concluded that appellant's lumbosacral sprain was "definitely related" to the August 15, 1992 injury and that her arthropathy "may have been a preexisting injury," but it was definitely aggravated by the August 1992 work incident.

On February 16, 1995 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision. The Office found that Dr. Regalla had again provided no rationale for her conclusion that appellant's ongoing back pain was related to the August 1992 incident.

Appellant again requested reconsideration and submitted a June 7, 1995 report from Dr. Regalla who stated that the Office had "chosen to misinterpret" her prior reports. Dr. Regalla noted that lifting containers weighing more than 25 pounds could cause an acute lumbosacral muscle strain and strain with subsequent pain syndrome. She added that such lifting could also cause a radiculopathy by irritation of a lumbosacral nerve root in a preexisting condition like degenerative disc disease and facet arthropathy, which appellant "definitely has" as shown by her CT scan.

Dr. Regalla indicated that appellant had not complained of any back pain prior to her work-related injury on August 15, 1992 and developed low back pain syndrome and a "painful lumbosacral radiculopathy" only after that date's lifting incident. Therefore, Dr. Regalla concluded, appellant's pain symptoms and disability were work related and caused by the August 1991 injury.

On February 2, 1996 the Office again denied reconsideration on the grounds that Dr. Regalla's latest report was insufficient to warrant modification of its prior decision.[2] The Office found that the premise for Dr. Regalla's conclusion—that appellant had no previous back complaints—was undermined by appellant's own statement that she had fallen on the ice in February 1992 and had experienced "continued pain" since then. Thus, Dr. Regalla's opinion was based on an inaccurate history and therefore had no probative value.

The Board finds that appellant has failed to meet her burden of proof in establishing that her back condition was sustained in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 or specific condition for which compensation is claimed is causally related to the employment injury.[4] 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.[5]

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.[6] The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[7] Thus the claimant must show that the specific event or incident or series of events or incidents within a single work day or shift resulted in an injury within the meaning of the Act.[8]

Once the claimant establishes fact of injury he or she must then demonstrate through medical evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specified conditions of the employment.[9] The causal

[2] Appellant's attorney requested reconsideration before the Office on June 22, 1995 and filed an appeal with the Board on June 26, 1995. By order dated November 13, 1995, the Board dismissed the appeal on the grounds that the Office and the Board may not exercise concurrent jurisdiction. 20 C.F.R. § 501.2(c); *Arlonia B. Taylor*, 44 ECAB 591, 597 (1993).

[3] 5 U.S.C. §§ 8101-8193 (1974).

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

[5] *Id.*

[6] *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

[7] 20 C.F.R. § 10.5(15).

[8] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

[9] *Robert Lombardo*, 40 ECAB 1038, 1041 (1989).

relationship must be shown by rationalized medical evidence which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and on a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.

The physician's conclusion of causal relationship must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.[10] Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that her condition was caused by her employment is sufficient to establish a causal relationship.[11]

In this case, Dr. Regalla initially indicated—in reports dated October 9, November 12, and December 16, 1992, and April 29 and May 3, 1993—that appellant's low back pain was caused by appellant's fall on the ice in February 1992. Subsequently, in her April 18, 1994 report, Dr. Regalla omitted any mention of the February 1992 incident and stated without explanation that appellant's back pain and muscle spasm were caused by the August 1992 lifting incident.

After the hearing representative denied the claim, appellant submitted a November 28, 1994 report from Dr. Regalla, who again failed to discuss the February 1992 fall or her reasons for concluding that appellant's lumbosacral sprain was caused by the August 1992 lifting incident, which also aggravated her preexisting arthropathy. This lack of medical rationale was the basis for the Office's denial of reconsideration on February 16, 1995.

As the Office stated, the mere fact that Dr. Regalla has alleged a causal relationship between appellant's back pain syndrome and a work incident is insufficient to establish such a connection. Dr. Regalla provided no explanation of why the lifting incident and not the preexisting arthropathy caused appellant's back pain, or why and how the lifting incident aggravated the preexisting condition, or, indeed, how the February 1992 fall on the ice affected appellant's back condition.

After reconsideration was again denied, appellant provided a June 7, 1995 letter from Dr. Regalla explaining that appellant's back pain syndrome developed only after the lifting incident because she had not complained of any back pain prior to the incident. The basis of Dr. Regalla's conclusion is belied by appellant's own statement on her claim form that she hurt her back falling on the ice in February 1992 and had "been in continual pain" since then.[12]

[10] *Steven R. Piper*, 39 ECAB 312, 314 (1987).

[11] *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

[12] *See Rosie M. Price*, 34 ECAB 292, 294 (1982) (finding that the mere occurrence of an episode of pain during the work day is not proof of an injury having occurred at work; nor does such an occurrence raise an inference of causal relationship); *Max Haber*, 19 ECAB 243, 247 (1967) (same).

Dr. Regalla was aware of this incident, as reflected in her earlier reports, but failed to discuss this factor in attributing appellant's back condition to the August 1992 lifting incident.[13]

In its March 26, 1994 letter to appellant, the Office emphasized that the medical evidence she had submitted was insufficient to support her claimed injury of August 1992 and explained specifically the kind of medical opinion needed, including the advice that the physician "must detail the medical reasoning" used to arrive at his or her conclusion or the opinion will have "no probative value."

Inasmuch as appellant was properly advised of the necessity of a rationalized medical opinion supporting her claim and failed to provide the requisite evidence, the Board finds that she has not met her burden of proof in establishing entitlement to compensation.[14]

The February 2, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 1, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

[13] *See Kimper Lee*, 45 ECAB 565, 574 (1994) (finding that a physician's rationale that appellant's condition was related to a previous lifting injury because appellant reported no similar problem prior to that accepted injury was insufficient to establish a causal relationship).

[14] *See Charlene R. Herrera*, 44 ECAB 361, 371 (1993) (finding that appellant failed to meet her burden of proof in establishing that she was disabled because of overuse syndrome).