

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY M. GRAWN and DEPARTMENT OF DEFENSE,
DEFENSE FINANCING & ACCOUNTING SERVICE, Denver, Colo.

*Docket No. 97-44; Submitted on the Record;
Issued October 9, 1998*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on May 25, 1995 as alleged.

On June 16, 1995 appellant, then a 48-year-old paralegal specialist, filed notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured her lower back when she lost her balance after bumping into another employee on May 25, 1995. The form also contains a witness statement from a coworker, Clark W. Butler, Jr., who indicates that on May 25, 1995 he bumped into appellant who was carrying a number of books. The coworker stated that appellant seemed stunned for about 10 to 15 seconds, she then lost her balance and fell on her tailbone.

On a sick slip dated June 5, 1995, Dr. Ralph G. Ratcliff, an attending Board-certified internist, checked "no" as to whether the injury occurred in the line of duty, but diagnosed low back pain after a fall.

In a treatment note dated June 5, 1995, Dr. Ratcliff indicated that appellant's back hurt twice during the past week. He also noted that she "was lifting & turning at the same time."

In a treatment note from the Wellness Center dated June 16, 1995, a nurse stated that appellant indicated she needed "to report to you about an OJI" which occurred "on May 25th or 26th" when she collided with another employee while appellant was carrying a load of books. She stated that she fell to the ground while still holding the books and "took my full weight directly on my tailbone." Appellant indicated that she went to the doctor for medicine the Saturday following the injury.

Appellant submitted another statement dated June 20, 1995 from a second witness, Ms. Collete Grant who stated that she saw appellant and another coworker bump into each other. She also noted that appellant was carrying a stack of books and/or papers which fell to the ground. She stated that appellant "slumped down to a sitting position" after a short delay.

In medical reports dated July 27 and September 5, 1995, Drs. F.V. Covita and Alexander L. Lambert, II, attending physicians, diagnosed back pain due to a fall in May 1995.

In a letter dated December 4, 1995, Dr. Lambert stated that appellant complained of “low back pain after she slipped and fell on her buttocks in May 1995.” Dr. Lambert diagnosed chronic pain secondary to myofascia pain syndrome.

By letter dated April 15, 1996, the Office of Workers’ Compensation Programs requested more detailed statements from her two witnesses as there was a significant difference between “losing her balance and falling” and slumping down to a sitting position.

In a separate letter dated April 15, 1996, the Office requested medical records relating to appellant’s June 4, 1995 emergency room visit and additional detail regarding injuries Dr. Ratcliff noted in his June 5, 1995 report.

In a note dated April 24, 1996, Mr. Butler stated that he agreed with Ms. Grant that appellant slumped down was more accurate than that she fell on her tailbone.

In an attending physician’s report dated May 23, 1996, Dr. David L. Kelble, an attending Board-certified internist, noted the date of injury as May 25, 1995 and diagnosed acute and chronic low back pain. Dr. Kelble checked “yes” to the question that appellant had a history or evidence of preexisting injury which was a back injury in 1991.

In a decision dated May 31, 1996, the Office denied appellant’s claim on the grounds that fact of injury had not been established. In an accompanying memorandum made part of the decision, the Office found that there was conflicting evidence regarding whether the claimed injury occurred in the manner alleged and made no findings regarding the medical evidence.

The Board finds that appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on May 25, 1996.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence, including the fact that the individual is an “employee of the United States” within the meaning of the Act and that the claim was timely filed within the applicable time limitation 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 related to the employment injury.²

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. The second

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.³

Although the Office found, in its May 31, 1996 decision, that there was conflicting evidence regarding whether the claimed May 25, 1995 incident occurred as alleged, there is no substantial evidence refuting that the falling incident occurred as alleged.⁴ Appellant's statement was corroborated by two witnesses that she bumped into another employee and then fell, and there is no affirmative evidence indicating that the incident on May 25, 1995 did not occur as alleged. The Board therefore finds that the factual and medical evidence of record established that appellant sustained an injury in the performance of duty. Specifically, the Board finds that appellant was seen by Dr. Ratcliff on June 5, 1995 following an emergency room referral. Dr. Ratcliff diagnosed sacroiliac joint strain, prescribed medication as well as a history of injury, symptoms and clinical findings. This evidence is sufficient to establish that appellant sustained the employment injury as alleged.

Accordingly, the case will be remanded to the Office for a determination as to the nature, extent and period of any disability resulting from the May 25, 1995 employment injury.

The decision of the Office of Workers' Compensation Programs dated May 31, 1996 is reversed and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, D.C.
October 9, 1998

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ Appellant's statement alleging an incident occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence; see *Robert A. Gregory*, 40 ECAB 478 (1989); *Carmen Dickerson*, 36 ECAB 409 (1984).