U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN L. NAEGLE and U.S. POSTAL SERVICE,
POST OFFICE, Dayton, Ohio

Docket No. 96-2130; Submitted on the Record;
Issued September 8, 1998

DECISION and ORDER

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

The issue is whether appellant has established a back injury in the performance of duty during a work shift commencing July 7, 1995.

In the present case, appellant filed a traumatic injury claim alleging that she sustained injury on July 7, 1995, due to continuous lifting of mail trays and pushing large mail containers.[1] In a decision dated August 23, 1995, the Office of Workers' Compensation Programs denied the claim on the grounds that the medical evidence was insufficient to establish an injury in the performance of duty. In a decision dated May 31, 1996, an Office hearing representative affirmed the denial of the claim.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] 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 component is whether the

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[1] It appears from a memorandum of conference dated July 25, 1995 that appellant attributed her injury to activities during the work shift that began late on July 7 and continued through the early morning of July 8, 1995.

[2] 5 U.S.C. §§ 8101-8193.

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

employment incident caused a personal injury and generally this can be established only by medical evidence.[4]

In this case, appellant has alleged that lifting trays and pushing containers during a single work shift caused a back injury. The Office has apparently accepted that the incidents occurred as alleged and there is no contrary evidence.[5] The issue in this case is whether there is sufficient medical evidence to establish an injury causally related to the identified employment incidents. The record contains a hospital report from an emergency physician[6] dated July 8, 1995, reporting a history of back problems for several months, noting that appellant stated that for the prior two days she had been "pushing a lot of stuff and working a little bit harder." The report provides results on examination and a diagnosis of acute exacerbation of lumbar strain.

In order to accept fact of injury, there must be some medical evidence establishing causal relationship between the diagnosed condition and the alleged employment incidents. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.[7] While there may be situations where little explanation is required,[8] in this case, the report from the emergency physician contains no opinion as to causal relationship with employment. The report is, therefore, not sufficient to establish fact of injury in this case.

Appellant subsequently submitted a form report (Form CA-17) dated July 30, 1995 and a Form CA-20 dated July 31, 1995 from Dr. John M. Kihm, a family practitioner. Dr. Kihm diagnosed chronic lumbosacral sprain and he checked a box "yes" that the condition was causally related to employment. The checking of a box "yes" in a form report, without additional explanation or rationale, is of limited probative value.[9] Dr. Kihm did not specifically identify work activities on July 7 and 8, 1995, nor does he provide a reasoned opinion relating the diagnosed chronic lumbosacral sprain to the identified work incidents. His form reports are not sufficient to establish an injury in the performance of duty in this case.

In a report dated September 12, 1995, Dr. Gary E. Kraus, a neurosurgeon, stated that appellant began having pain approximately nine months earlier, noting that after lifting heavy objects at the employing establishment, appellant noticed back discomfort. Dr. Kraus did not

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[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[5] The hearing representative stated that the factual evidence submitted "raise doubt that this is a traumatic injury claim," which apparently refers to the distinction between an occupational injury produced over a period longer than a single work shift, and a traumatic injury claim. The claim in this case, however, was for a traumatic injury during a single work shift and there is no contrary evidence as to the alleged incidents.

[6] The name of the physician is illegible.

[7] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

[8] The Office's procedure manual notes that in some situations where the claimant obtains prompt medical care, a simple affirmative answer by the physician as to causal relationship may suffice. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(c) (April 1993).

[9] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

discuss lifting on July 7 and 8, 1995. He diagnosed a herniated disc at L5-S1, without providing a reasoned opinion as to causal relationship between the diagnosed condition and the identified employment incidents. The record also contains a March 5, 1996 report, from Dr. Kraus indicating that appellant's back pain had improved, but bending and heavy lifting increased the pain. Dr. Kraus did not provide an opinion on causal relationship with employment.

The Board accordingly finds that appellant has not submitted sufficient medical evidence to establish a back injury in the performance of duty causally related to work incidents during the work shift commencing July 7, 1995. It is, as noted above, appellant's burden to establish her claim and the Board finds she has not met her burden in this case.

The decisions of the Office of Workers' Compensation Programs dated May 31, 1996 and August 23, 1995 are affirmed.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member