

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBORAH L. GONZALEZ and DEPARTMENT OF DEFENSE,
FORT MEYER COMMISSARY, Ft. Meyer, FL

*Docket No. 99-20; Submitted on the Record;
Issued April 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained a back injury in the performance of duty on April 29, 1996.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a back injury in the performance of duty on April 29, 1996.

On November 26, 1996 appellant, then a 35-year-old store worker, filed a traumatic injury claim (Form CA-1) assigned number A25-499767 alleging that on April 29, 1996, her first day back to light-duty work, she sustained a lower back injury because she was on her feet all day bending and stooping with no time to sit down.¹ She stopped work on April 30, 1996.² Appellant's claim was accompanied by factual and medical evidence.

By letters dated February 12, 1997, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised appellant to submit additional factual and medical evidence supportive of her claim. By a response dated April 10, 1997, appellant submitted factual evidence.

By decision dated April 16, 1997, the Office found the evidence of record insufficient to establish that appellant sustained an injury at the time, place and in the manner alleged.

In a May 2, 1997 letter, appellant, through her counsel, requested an oral hearing before an Office representative.

¹ Prior to the instant claim, appellant filed a Form CA-1 assigned number A25-486515 for a February 11, 1996 back injury. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar sprain.

² By letter dated February 7, 1997, the employing establishment terminated appellant's employment on the grounds that she was unable to perform the duties of her position.

By decision dated June 18, 1998, the hearing representative affirmed the Office's decision on the grounds that the evidence of record was devoid of any medical rationale to establish that appellant sustained an employment-related injury.

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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.⁴ 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.⁵

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.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷

In the instant case, the hearing representative affirmed the Office's earlier decision due to the lack of rationalized medical evidence explaining why the April 29, 1996 work incident⁸ caused appellant's back injury. The record reveals an April 19, 1994 magnetic resonance imaging (MRI) report from Dr. Steven H. Brick, a Board-certified radiologist, indicating a normal study of appellant's lumbar spine.

The record further reveals hospital treatment notes dated January 18, 1995 from a physician whose signature is illegible regarding appellant's treatment for severe lumbar back pain and left leg pain due to vacuuming a floor that afternoon.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

⁸ The Board notes that the record reveals that the actual date of appellant's injury was April 24, 1996 rather than April 29, 1996.

Additionally, the record further reveals an April 25, 1996 duty status report (Form CA-17) from Dr. Richard E. Ranel, a neurologist, regarding appellant's February 11, 1996 employment injury. Dr. Ranel's treatment notes dated March 28 and April 2, 1996 noted appellant's previous treatment for her back condition and other conditions. In his May 14, 1996 treatment notes, Dr. Ranel indicated that appellant was attempting to return to work, that she had been out of work since April 30, 1996 and appellant's description of how her injury occurred. In a May 30, 1996 attending physician's report (Form CA-20), Dr. Ranel indicated that appellant's condition was due to a reinjury which occurred on appellant's return to work on April 29, 1996. In his August 26, 1996 Form CA-17, Dr. Ranel indicated a diagnosis of "724.4" and appellant's physical restrictions. In a Form CA-20 of the same date, Dr. Ranel noted that his diagnosis was the same as his previous diagnosis and that appellant's condition was caused by employment activity by placing a checkmark in the box marked "yes." In his September 23, 1996 Form CA-17, Dr. Ranel noted appellant's physical restrictions and that she could return to work on September 26, 1996. Dr. Ranel's March 3 and 17, April 10 and 17, 1997 medical reports and treatment notes addressed appellant's various conditions, including her back condition.

The record also reveals a December 31, 1996 medical report of Dr. Bruce J. Ammerman, a Board-certified neurosurgeon, who provided his findings on neurological examination and recommended that a myelography would be helpful to determine appellant's further medical treatment.

Medical treatment notes dated February 2, April 12, August 8 and October 6, 1997 and January 14, 1998 from physicians whose signatures are illegible addressed appellant's treatment for her back condition.

The hospital emergency treatment notes of Dr. Edmond A. Hooker, who is Board-certified in emergency medicine, dated March 5, 1997, noted the April 1996 incident, appellant's medical, family and social histories, his findings on physical examination and a diagnosis of back pain.

None of the above medical evidence is sufficient to establish appellant's burden inasmuch as it does not explain how appellant's back condition was caused by the April 24, 1996 work incident.

The August 17, 1997 hospital treatment notes signed by Patrice Hutton, a certified nurse practitioner, and November 28, 1997 hospital treatment notes signed by Sarah J. Hughes, a family nurse practitioner, concerning appellant's treatment for back pain have no probative value inasmuch as a nurse is not considered a "physician" under the Act and therefore is not competent to give a medical opinion.⁹

Inasmuch as appellant has failed to submit rationalized medical opinion evidence establishing that her back condition was caused by the April 24, 1996 work incident, the Board finds that appellant has failed to satisfy her burden of proof.

⁹ 5 U.S.C. § 8101(2); *see also Bertha L. Arnold*, 38 ECAB 282 (1986).

The June 18, 1998 decision of the Office of Workers' Compensation Programs' hearing representative is hereby affirmed.

Dated, Washington, D.C.
April 11, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member