U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY A. WALKER and DEPARTMENT OF VETERANS AFFAIRS, REGIONAL OFFICE BOISE, Boise, ID

Docket No. 98-1542; Submitted on the Record;
Issued March 10, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on October 17, 1996 as alleged.

On October 17, 1996 appellant, then a 50-year-old secretary, filed a traumatic injury (Form CA-1) alleging that on October 17, 1996 she "stepped on ice, falling, catching full weight on right elbow/upper arm, completely on back" when she slipped on "pavement wet from sprinklers -- ice forming" sustaining "bruises and pain to right elbow; pain and soreness extending to upper arm and neck/shoulder." Appellant indicated that she did not receive medical attention until September 26, 1997 from Dr. William Brus, a Board-certified family practice physician, at Family Practice Associates in Boise, Idaho. On September 30, 1997 appellant submitted a return to work report from Dr. Brus dated September 26, 1997. Dr. Brus checked the box indicating that appellant could return to regular work and noted that she should return to him in two weeks.

By letter dated October 10, 1997, the Office of Workers' Compensation Programs advised appellant that additional information was required in order to perfect her claim and was provided a detailed list of questions and requested that appellant respond within 21 days of receipt of the letter.

On October 15, 1997 appellant submitted answers to the Office's list of questions. She stated:

> "The immediate effects of my injury were tenderness and bruises to the elbow and upper arm and I immediately put an ice pack on the area I hit (*i.e.*, elbow and surrounding) and took a couple of aspirin. My husband, who had just dropped me off at work helped me into the building and I went into the IRM office where a co-worker helped to compose me. I related the story to her and when I got to my office called the [s]upport [s]ervices [c]hief to let him know of the accident and to

prevent others from slipping on the ice, ensure that area was salted. I then went to my HRM liaison and let him know what happened and he gave me the CA-1 to fill out and [I] did so.

"No, I did not sustain any injury at all between the date of injury and when it was first reported to either my supervisor or d[octo]r.

"I did not go to the [d]octor right away because after a few days the bruises went away and there did not seem to be any pain. My elbow started to bother me in the spring and late spring I decided to try and find a medical physician who specialized in my type of injury. I tried to get into several; however, when they found out it was a [w]ork[ers'] [c]omp[ensation] case they declined to see me, so I put it off and by summer I noticed it was becoming more painful and was having a considerable amount of pain which did not go away after grasping and cold started to affect the area of injury. Finally, in August I knew I could not put it off any longer, and on a visit to the Idaho Physician's Associates for an unrelated case, asked if they had a physician who did [w]ork[ers'] [c]omp[ensation] and they did."

She also noted that a narrative would be supplied by an attending physician.

On October 21, 1997 Dr. Brus, appellant's treating physician, submitted two medical reports dated September 26 and October 10, 1997. Dr. Brus diagnosed right elbow tendinitis. He noted:

"Patient is here today stating that about a year ago on October 16, 1996 she fell on some ice outside of her workplace and landed on her right elbow and hit the lateral aspect of it. She did not think too much of it at the time but has had consistent and persistent pain in the lateral part of her elbow since. She has been having radiation of pain into the forearm and into the arm and was wanting this evaluated. She has not tried any particular kinds of medications."

He recommended that appellant do some stretching and strengthening exercises using an elbow strap. He prescribed Naprosyn 500 and released appellant to her regular work activities and recommended that she return in two weeks for a recheck. In the recheck report dated October 10, 1997, Dr. Brus noted that appellant was doing better with the prescribed medication and exercising. He recommended that she continue the exercises and Naprosyn 500 as needed and return in one month for a recheck.

By decision dated November 10, 1997, the Office denied appellant's claim for failure to submit sufficient medical evidence necessary to support her claim. The Office states:

> "The evidence of record does not establish that you are entitled to benefits under the Federal Employees' Compensation Act,[1] *et seq.*, because you have not established causal relation."

By letter received November 25, 1997, appellant requested reconsideration before the Office. In support of appellant's request, she stated that she was requesting reconsideration based on narrative reports from Dr. Brus already on file. She also submitted an Industrial Accident Report indicating that she "[f]ell on ice outside workplace, catching full weight on right elbow and upper arm, completely on back."

By decision dated February 3, 1998, the Office denied modification of the November 10, 1997 decision, finding that the evidence submitted was insufficient to warrant review of the case on the merits under 5 U.S.C. § 8128.

The Board finds that appellant has failed to establish that she sustained tendinitis of the right elbow as alleged.

An employee seeking benefits under the Act 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.[2] 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.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton* 40 ECAB 1143, 1145 (1989).

[3] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

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

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

the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[7]

In the instant case, appellant has alleged that she sustained a traumatic injury causally related to her federal employment. In her initial claim, she submitted two reports from Dr. Brus dated September 26 and October 10, 1997 indicating her complaint of forearm, elbow, shoulder and neck pain and Dr. Brus diagnosed right elbow tendinitis. The Industrial Accident Report received by the Office on November 14, 1997 only offered a history of the accident and a brief description from Dr. Brus stating that appellant had "right forearm/elbow pain radiating up to shoulder and neck." No medical rationale was submitted in support of appellant's alleged claim.

The Board has held that a physician's opinion is not dispositive simply because it is offered by a physician.[8] To be of probative value to appellant's claim, the physician must provide a proper factual background and must provide medical rationale which explains the medical issue at hand, be that whether the current condition is disabling or whether the current condition is causally related to the accepted employment injury. Where no such rationale is present, the medical opinion is of diminished probative value.

Appellant did not submit medical evidence to establish that her right elbow tendinitis was sustained in the performance of duty causally related to factors of her federal employment-related duties. None of the reports provide a probative, rationalized medical opinion sufficient to establish that appellant sustained a disability causally related to employment factors.

[6] *Id.*

[7] *Alberta S. Williamson*, 47 ECAB 569 (1996).

[8] *See Michael Stockert*, 39 ECAB 1186 (1988).

The decisions of the Office of Workers' Compensation Programs dated February 3, 1998 and November 10, 1997 are hereby affirmed.

Dated, Washington, D.C.
March 10, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member