U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUCIA A. MEJIA and U.S. POSTAL SERVICE,
MORGAN GENERAL MAIL FACILITY, New York, NY

Docket No. 99-2366; Submitted on the Record;
Issued October 6, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained injuries to her lower back and right knee in the performance of duty.

The Board has duly reviewed the case record on appeal and finds that this case is not in posture for a determination of whether appellant sustained injuries to her lower back and right knee in the performance of duty. Further development of the medical evidence is required.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim.[2] When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office of Workers' Compensation Programs 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

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[1] 5 U.S.C. § 8101 *et seq.*

[2] *See Margaret A. Donnelley*, 15 ECAB 40 (1963).

[3] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4]

On July 13, 1995 appellant, then a 41-year-old mail processor, filed a notice of traumatic injury, Form CA-1, alleging that on that day she fell down on her right knee while in the performance of her duties. In support of her claim appellant submitted disability certificates dated July 14 and August 4, 1995 from Dr. Gregori S. Pasqua, which indicated that appellant had sustained a lumbosacral sprain and right knee contusion due to a July 13, 1995 employment injury.

The employing establishment controverted the claim on the grounds that appellant had provided an inconsistent history of the injury. On the claim form, appellant's supervisor, J. Ramseur, stated that when he first asked appellant to describe the cause of the accident, appellant stated that she had experienced a pain in her right leg which caused her to fall, but that later, in a written statement, appellant stated that she had slipped on some labels on the floor.[5]

In a decision dated September 20, 1995, the Office denied appellant's claim on the grounds that despite an August 21, 1995 request for additional information, appellant had not submitted sufficient factual and medical evidence to establish her claim.

By letter dated August 20, 1996, appellant requested reconsideration of the Office's decision and submitted additional evidence in support of her request. In a decision dated October 28, 1996, the Office declined to modify its prior denial on the grounds that while the evidence of record supported a finding that appellant had slipped and fallen while at work, the medical and factual evidence was insufficient to establish that appellant's diagnosed conditions were causally related to the work incident and not to preexisting conditions.

By letter dated October 22, 1997, appellant requested reconsideration and submitted additional evidence in support of her request. In a decision dated March 29, 1999, the Office denied appellant's claim on the grounds that the medical evidence of record was insufficient to establish a causal relationship between the diagnosed back and knee conditions and the July 13, 1995 work incident.

An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment, may cast sufficient doubt on an employee's statements in determining whether he or she has established a *prima facie* case. The employee has the burden of

[4] *John J. Carlone, supra* note 3.

[5] The record contains a statement from union representative Peggy Johnson, who stated that she was present when appellant spoke to Mr. Ramseur and that she did not hear appellant tell him that she had fallen due to a pain in her leg. Mr. Ramseur responded, stating that appellant's statement occurred while Ms. Johnson was briefly absent from the room.

establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[6]

In this case, the record contains a written statement from coworker Santos Vargas, who stated that on July 13, 1995, as he walked away from appellant after helping her to fix a machine, he heard a loud thump and a cry of pain and turned to see appellant on the floor. Appellant also submitted a statement from acting supervisor G. Palacios, who stated that on July 13, 1995 he saw appellant down on the floor, apparently in pain. Both Mr. Palacios and Mr. Vargas stated that appellant told them at that time that she had slipped on some labels that were lying on the floor. The Board finds that the evidence of record is sufficient to establish an incident as alleged on July 13, 1995.

The question, therefore, becomes whether the July 13, 1995 incident caused or aggravated the back and right knee conditions for which she seeks compensation.

Causal relationship is a medical issue,[7] and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[8] must be one of reasonable medical certainty,[9] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incidents or factors of employment.[10]

The relevant medical evidence of record includes disability certificates dated July 14, 1995, the day after the employment accident and August 4, 1995, from Dr. Gregori S. Pasqua, appellant's treating chiropractor, which indicated that appellant had sustained a lumbosacral sprain and right knee contusion due to a July 13, 1995 employment injury. In addition, the record contains attending physician's reports, Form CA-20, dated August 31 and September 21, 1995, in which Dr. Pasqua diagnosed lumbosacral spine and right knee sprains and indicated by checkmarks that there was no history or evidence of concurrent or preexisting injury or disease or physical impairment and that he believed the diagnosed conditions were caused or aggravated by appellant's employment activity. Dr. Pasqua further indicated that he had treated appellant with spinal manipulation. Appellant further submitted an x-ray report dated July 27, 1997 from Dr. Frank Garofalo, a Board-certified radiologist, which listed impressions of straightening of the normal lordotic curve and transitional vertebrae at L5-S1 and a negative impression of the

[6] *Merton J. Sills*, 39 ECAB 572 (1988).

[7] *Mary J. Briggs*, 37 ECAB 578 (1986).

[8] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[9] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[10] *See William E. Enright*, 31 ECAB 426, 430 (1980).

right knee. In an accompanying narrative report dated June 17, 1996, Dr. Pasqua referenced the x-ray reading and explained that the straightening of the lumbosacral spine on x-ray represented a spinal subluxation under federal guidelines.[11]

The record also contains a narrative report dated June 13, 1996 from Dr. Stuart Remer, a Board-certified orthopedic surgeon, who stated that appellant initially presented on February 16, 1996 with complaints of persistent low back pain and increasingly severe right knee pain since an employment-related fall on July 13, 1995. Dr. Remer stated that he treated appellant conservatively with therapy and medication, but when he saw appellant again on March 25, 1996, her pain had not improved. Dr. Remer stated that magnetic resonance imaging of the right knee was performed, which was positive for an effusion on the knee but did not reveal evidence of a meniscal tear. He explained that when appellant's knee condition continued to be unresponsive to conservative treatment, he scheduled appellant to undergo arthroscopic surgery on May 8, 1996, however, appellant cancelled the procedure. When Dr. Remer next saw appellant on May 13, 1996 appellant reported that her knee was becoming increasingly unstable with ambulation, and that on May 9, 1996 she had again fallen at work and had to be taken to the emergency room. He stated that on physical examination of the right knee, appellant had severe tenderness over the medial and lateral aspect with ecchymosis present and her neurological examination was grossly intact. X-rays taken showed a question of a nondisplaced lateral tibial plateau fracture, but a computerized tomography scan of the knee did not reveal a fracture present. When Dr. Remer next saw appellant on May 17, 1996, she stated that due to her increasing pain, she wished to reconsider surgical intervention. On June 11, 1996 a right knee arthroscopy was performed, which revealed a torn meniscus of the right knee, synovitis and chondromalacia of the medial femoral condyle. He concluded that it appeared that appellant's low back and right knee injuries were causally related to her injury at work.

The medical record in this case lacks a well-reasoned narrative from a physician relating appellant's low back and right knee injuries to the July 13, 1995 employment fall. Dr. Pasqua expressed his opinion on causal relationship only by checkmark,[12] and while Dr. Remer clearly stated that he believed appellant's low back and right knee conditions were related to her employment injuries, he did not explain his conclusions in light of the fact that he first saw appellant approximately seven months after the July 13, 1995 incident. Nonetheless, the Board finds that the medical reports submitted by appellant, taken as a whole, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[13] Additionally, the Board notes that in this case the record contains no medical

[11] Section 8101(2) of the FECA provides that the term "physician'' includes chiropractors to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist; *see Sheila A. Johnson*, 46 ECAB 323 (1994).

[12] A medical report which checks a box on a form report "yes," with regard to whether a condition is employment related, is of diminished probative value without further detail and explanation. *Alberta S. Williamson*, 47 ECAB 569 (1996); *Lester Covington*, 47 ECAB 539 (1996).

[13] *See John J. Carlone, supra* note 3 (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion. Furthermore, the Board notes that the record contains evidence that appellant may have sustained a second employment-related injury to her right knee on May 9, 1996. Dr. Remer notes a second employment-related fall on May 9, 1996 and this is supported by a September 6, 1996 memorandum of conference present in the record, which contains a notation that Mr. J.C. Rayford, a human resource specialist with the employing establishment, stated that appellant had filed a new claim alleging that her right knee condition had been exacerbated by a work-related incident on May 9, 1996. The Board will set aside the Office's March 29, 1999 decision and remand the case for further development of the medical evidence regarding the causal relationship, if any, between appellant's employment and the diagnosed low back and right knee conditions. Upon return of the case record, the Office should double this case file with all appellant's injury claims for the same parts of the body.[14] Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

The March 29, 1999 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
October 6, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member

[14] FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be combined when a new injury is reported for an employee who has filed a previous injury claim for the same part of the body.