U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHEZLAZINE ANDERSON and DEPARTMENT OF VETERANS AFFAIRS VETERANS ADMINISTRATION HOSPITAL, Little Rock, AK

Docket No. 99-1719; Submitted on the Record;
Issued September 8, 2000

DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty causally related to factors of her federal employment.

On February 22, 1998 appellant, then a 58-year-old food service worker, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on or about November 1997 she hurt her knees, leg, back and shoulder by pushing carts. She was initially placed on light duty, stopped work from February 5 to 20, 1998 and returned to light duty.

Appellant also provided disability slips from Dr. Gilbert C. Evans, a general practitioner, dated February 12 and 5, 1998. In the February 5, 1998 disability slip, Dr. Evans stated that appellant was seen in his office and was to remain off work until he saw her in a week. In the February 12, 1998 disability slip, he stated that appellant was to be off work until he saw her on February 20, 1998.

An undated accident report was also submitted and an annotation was noted placing appellant on light duty as of January 6, 1998. A note in the report indicated that appellant felt pain in the back, knees, legs and shoulder from pushing food carts.

In a March 9, 1998 letter, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. She was allotted 30 days to submit the requested evidence.

Appellant replied to this request and submitted additional medical reports from Dr. Evans, progress notes, and a duty status report along with duplicate reports previously submitted.

In a February 12, 1998 report, Dr. Evans stated that appellant returned and her dorsal spine complaints were less but her complaints regarding the knees were worse. The pain now radiated down to her legs to the ankles. He indicated that, due to appellant's mixed response to therapy, he requested permission to have x-rays made. Dr. Evans did not want to prescribe physical therapy or steroids until a more definitive diagnosis was made regarding the cause of her pain.

Appellant submitted progress notes from November 29, 1984 to March 26, 1998 from Dr. Evans. The progress notes revealed that appellant had a tumor removed from the right side of her back in 1981 and degenerative arthritis of the right knee in 1996. In a January 8, 1998 treatment note, Dr. Evans reported that since about November 1997 appellant indicated that her knees, back and shoulder hurt because of the new carts that were heavier than the old ones. Appellant indicated that other employees in their forties also noticed similar problems in their bodies. He noted overuse syndrome secondary to unsafe working conditions and aggravation of preexisting degenerative arthritis. In a February 26, 1998 treatment note, Dr. Evans diagnosed "generalized stress reaction secondary to occupational injury."

In an April 21, 1998 letter to the employing establishment, the Office requested additional information regarding the physical description of appellant's job requirements and the make and description of the old and new carts.

The Office also sent a letter dated April 21, 1998 to Dr. Evans and requested that he respond to questions concerning appellant's entitlement to compensation. In particular, the Office requested that Dr. Evans provide a diagnosis for appellant's condition and support it with objective evidence such as x-rays and tests. The Office also requested that Dr. Evans discuss whether appellant's condition was a direct result of her activities at work and whether the claimant's condition was caused or aggravated by her duties at work, and what specific aspects of her duties affected her condition. Additionally, the Office inquired if appellant had any prior conditions that would effect her present condition.

Appellant also submitted an April 2, 1998 statement that was received by the Office on April 6, 1998. In her statement, appellant indicated that she worked with the new system that started in November 1997. Since the new system came in, she claimed that she was hurt by pushing the new transtronic carts.

In a letter dated April 24, 1998, the Office sent a copy of appellant's April 2, 1998 statement to the employing establishment and requested comments from a knowledgeable supervisor concerning the accuracy of all statements provided.

The employing establishment provided brochures, a statement and directions for tray delivery and pick up. The employing establishment also provided a comparison between the old and new carts.

Appellant's physician responded to the April 21, 1998 request from the Office by indicating that he was sending a copy of his chart notes as proof that he had already complied with the request by the Office. Included in these chart notes were treatment notes dated April 9

to May 21, 1998. These treatment notes reported appellant's status but did not address the cause of her condition.

In a June 1, 1998 decision, the Office denied compensation on the grounds that the evidence of record failed to demonstrate a causal relationship between appellant's diagnosed condition and factors of her employment. The Office noted that Dr. Evans had not sufficiently addressed the cause of appellant's condition.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty causally related to factors of her employment.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim by the weight of the 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 or specific condition for which compensation is claimed is causally related to the employment injury.[2] These are the essential elements of each and every case regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[4]

The medical evidence required to establish a causal relationship, generally is rationalized medical opinion evidence.[5] 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 the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the

[1] 5 U.S.C. §§ 8101-1893.

[2] *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

[3] *Daniel J. Overfield*, 42 ECAB 718 (1991).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[5] The Board has held that in certain cases, where the causal connection is obvious, expert medical testimony may not be necessary, *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

claimant,[6] must be one of reasonable medical certainty[7] 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.[8]

In the instant case, appellant was informed that she needed to submit a comprehensive medical report from her treating physician explaining how work factors or incidents in her employment caused or contributed to her claimed conditions. However, the medical evidence of record is insufficient.

Dr. Evans failed to adequately address the causation issue. His January 8, 1998 treatment note diagnosed overuse syndrome due to unsafe working conditions while his February 26, 1998 treatment note diagnosed a stress reaction secondary to an occupational injury. These vague statements in support of causal relationship are insufficient. Dr. Evans provided no medical explanation regarding how any diagnosed conditions were related to the new transtronic carts or any other work factors. He also did not identify what part of appellant's body was affected by overuse syndrome nor did he provide any medical rationale explaining why a stress reaction would result from a specific work factor or a specific work injury. To be of probative value to appellant's claim, Dr. Evans must express an opinion that addresses the specifics both factual and medical of appellant's case.[9]

An award of compensation may not be based upon surmise, conjecture or speculation, or upon appellant's belief that there is a causal relationship between his condition and his employment.[10] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of federal employment identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.[11] She failed to submit such evidence and therefore failed to discharge her burden of proof.[12]

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

[7] *See Morris Scanlon*, 11 ECAB 3854, 385 (1960).

[8] *See James D. Carter*, 43 ECAB 113, 123 (1991); *George A. Ross*, 43 ECAB 346, 351 (1991); *William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *Victor J. Woodhams*, 41 ECAB 345, 353 (1989).

[10] *William S. Wright*, 45 ECAB 498 (1993).

[11] *Id.*

[12] Following the issuance of the Office's June 1, 1998 decision, the appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated June 1, 1998 is affirmed.

Dated, Washington, D.C.
September 8, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member