U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY C. BURROUGHS and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Tuscaloosa, AL

Docket No. 00-2787; Submitted on the Record;
Issued December 13, 2001

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a lumbar injury in the performance of duty as alleged.

On December 13, 1999 appellant, then a 45-year-old nurse manager, filed a claim alleging that on December 1, 1999 she sustained a low back injury while pushing an occupied bed.[1] She described progressive lumbar tightness and pain through December 6, 1999. Appellant stopped work on December 6, 1999, and returned to full duty on December 13, 1999.[2]

In a December 6, 1999 report, Dr. Roy F. Roddam, an attending internist, noted that, on December 1, 1999, appellant was "required to do some patient work … and a few days after that began to have pain in her lower back with limitation of motion." On examination Dr. Roddam found "marked limitation of flexion and almost no ability to extend," with "some percussion tenderness over her lumbosacral spine region." He diagnosed "muscle spasm" and prescribed medication and home exercises.

In a December 8, 1999 note, Dr. Roddam held appellant off work from December 6 to 10, 1999 due to a "back injury."

In a December 14, 1999 duty status form report, Dr. Roddam provided a history of injury as "back injury resulting from moving bed" and noted findings of decreased range of lumbar

[1] In a December 15, 1999 note, Rochelle Riddle, one of appellant's coworkers, corroborated appellant's account of pushing the bed on December 1, 1999, stating that the bed was "hard to steer."

[2] In a February 4, 2000 letter, appellant stated that she delayed seeking medical treatment until December 6, 1999 as her "back did not become uncomfortable immediately." She described an increasing "tightness" in her low back during the five days after the accident before she sought medical treatment. Appellant noted that she did not have a prior history of back problems.

motion secondary to muscle spasm and diagnosed "muscle spasm." He released appellant to full, unrestricted duty.

In a December 21, 1999 letter, the employing establishment controverted appellant's claim, asserting that appellant continued to work full duty on December 2 and 3, 1999 without complaint and sang in the employing establishment's holiday pageant on December 3, 1999. Appellant was not on duty on December 3 and 4, 1999 did not report the injury until December 6, 1999 and continued to perform her regular duties on December 1 and 2, 1999.[3]

In a January 4, 2000 letter, the Office of Workers' Compensation Programs advised appellant of the type of additional medical and factual information needed to establish her claim. Appellant did not submit additional medical evidence.[4]

By decision dated February 15, 2000, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that Dr. Roddam's December 6, 1999 report was insufficient to establish her claim, as it lacked "a diagnosis, detailed history" and did not address causal relationship.

Appellant disagreed with this decision and in a March 6, 2000 letter requested a review of the written record by a representative of the Office's Branch of Hearings and Review. She also submitted a copy of Dr. Roddam's December 6, 1999 report, already of record. Appellant asserted that this report substantiated that she had sustained a lumbar sprain or strain.

By decision dated July 24, 2000 and finalized July 31, 2000, the Office hearing representative affirmed the Office's February 15, 2000 decision, finding that appellant had not established fact of injury. The hearing representative found that appellant has established that, on December 1, 1999, in the performance of duty, she pushed an occupied bed. However, the hearing representative found that there was insufficient medical evidence to establish that she sustained an injury as a result of pushing the bed. The hearing representative noted that Dr. Roddam's December 6, 1999 report was insufficient to establish that she sustained the injury as alleged, as it contained "no opinion addressing whether the condition found was caused by the employment incident of December 1, 1999."

[3] In a December 15, 1999 accident report, an employing establishment supervisor noted that appellant first reported the alleged December 1, 1999 incident by December 6, 1999 telephone call.

[4] The Board notes that appellant made significant efforts to obtain the medical evidence requested. She wrote February 4 and March 6, 2000 letters to Dr. Roddam explaining the deficiencies in his December 6, 1999 report and the type of medical evidence needed to establish her claim. However, Dr. Roddam did not respond other than by sending additional copies of the December 6, 1999 report. The employing establishment also contacted Dr. Roddam in an attempt to obtain additional medical evidence. In a February 3, 2000 memorandum, an employing establishment claims specialist noted speaking to Dr. Roddam by telephone, and advising him of the need for a "more detailed report of the examination and his findings, including any tests performed, diagnosis and a history of the injury," and a statement addressing causal relationship. "Dr. Roddam stated that everything he discussed with [appellant] was included in the exam[ination] report.… He stated that all he can do … is state the history as reported to him, examine and treat the patient."

The Board finds that appellant has not established that she sustained a lumbar injury in the performance of duty as alleged.

To determine whether an 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.[5] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[6] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.[7]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[8] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[9]

In support of her claim, appellant submitted reports from Dr. Roddam, an attending internist. In his December 14, 1999 report, Dr. Roddam stated that appellant sustained a "back injury resulting from moving [a] bed" on December 1, 1999. In a December 6, 1999 report, Dr. Roddam described objective findings of severely limited lumbar motion, and diagnosed a "muscle spasm." He held appellant off work from December 6 to 10, 1999.

However, Dr. Roddam did not provide medical rationale explaining how and why pushing the bed on December 1, 1999 would cause the findings observed or result in the diagnosed lumbar muscle spasm. Therefore, his reports are of diminished probative value, and are insufficient to establish causal relationship in this case.[10]

Consequently, appellant has failed to establish that she sustained a lumbar injury as alleged, because she failed to submit sufficient rationalized medical evidence to establish a causal relationship between the accepted December 1, 1999 incident and the diagnosed lumbar spasm.

---

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

[6] *Id.*

[7] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

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

[9] *See John J. Carlone*, *supra* note 5.

[10] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

The decision of the Office of Workers' Compensation Programs dated July 24, 2000 and finalized July 31, 2000 is hereby affirmed.

Dated, Washington, DC
December 13, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member