

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOYCE ALLEN and U.S. POSTAL SERVICE,
POST OFFICE, Greensboro, NC

*Docket No. 00-1128; Submitted on the Record;
Issued March 16, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained an injury while in the performance of duty on February 24, 1998.

The Board has carefully reviewed the case record and finds that this case is not in posture for decision because of an unresolved conflict in the medical opinion evidence.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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 evidence to establish that he or she actually experienced the

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983).

³ See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Melinda C. Epperly*, 45 ECAB 196 (1993).

⁶ See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

employment incident at the time, place and in the manner alleged.⁷ 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.⁸

In this case, appellant, then a 64-year-old postal clerk, filed a traumatic injury claim on April 21, 1998, alleging that she fell on February 24, 1998. She stopped work on February 25, 1998 and returned on March 1, 1998.

By decision dated June 26, 1998, the Office of Workers' Compensation Programs denied the claim. The Office found that appellant actually experienced the claimed accident, but that the evidence was insufficient to establish that a condition had been diagnosed in connection with the fall.

Appellant disagreed with the June 26, 1998 decision and requested an oral hearing, which was held on January 25, 1999. During the hearing, she testified that, on February 24, 1998, she slipped and fell, injuring her leg. She stated that she reported the incident to her supervisor on February 28, 1998.

Appellant testified that she began to experience trouble with her back in late March. She added that she had never had any other accident subsequent to the accident at work that could have caused the diagnosed compression fractures.

In a report dated May 8, 1998, Dr. Philips Carter, an orthopedist, related that appellant was seen for discomfort in her right sacroiliac area and attributed this to a fall on her buttocks in February at work. He stated that appellant did not remember having done any lifting or any other possible cause for the problem. A magnetic resonance imaging (MRI) scan and computerized tomography (CT) scan dated April 17 and 21, 1998 revealed an L3 compression fracture, about 60 percent with retropulsion and mild canal stenosis, and a similar compression at L4. Dr. Carter opined that appellant was not able to appreciate the injury to her back, which was picked up by CT and MRI scans because of the morphine she was taking for another condition.

In a May 29, 1998 report, Dr. Carter stated: "[Appellant's] bone scan showed the presence of the two compression fractures and some arthritis in the neck but nothing at the sacroiliac joint or the pelvis, so I think that her continued pain is all from the compression fractures in the spine." Dr. Carter later stated: "She is upset that someone mentioned the fracture was seen on the GI [gastrointestinal] series of March 9, 1998 [sic] and no one told her about it. I am looking at the GI series that she is bringing today, and I do not really see it as demonstrated, but one of the radiologists who read the CT scan comments that it is visible on the March 6, 1998 upper GI. "I assured her there is no evidence of the lumbar spine fracture seen on March 6, 1998."

In a report dated June 23, 1998, Dr. William Rowe, a Board-certified rheumatologist, discussed appellant's condition and the history of the claimed work injury. He stated:

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Id.*

“She has had some problem at work getting appropriate [w]orkmen’s [c]ompensation for this injury, and on reviewing her history it is very clear that even though she did not initially report this, given her temporal sequence of events, that clearly her compression fractures occurred at work, or when she was still on the property at work, when she slipped and fell in the parking lot, I believe, on some oil spill landing on her buttocks, and had back discomfort which persisted and worsened over the next day or two, and became very substantial to her. This undoubtedly is when she had her compression fracture, given the locations of her injuries, the appearance on x-ray, the fact that she had never had back pain of this type before and the type of fall she had.

“We need a baseline bone density scan on her to determine whether she is in fact osteopenic, or whether her fractures were really simply because of the mechanical stress she had, rather than being superimposed on underlying osteoporosis.

“This letter should suffice, I hope, to clarify for [w]orkm[e]n’s [c]ompensation and her work the fact that this compression fracture, injuring her spine, pain and back injury occurred at work and is clearly supported by the history given the type of fall she had over the time frame when it occurred, near the end of February of this year.”

In an office note dated July 2, 1998, Dr. Cassiano discussed whether the fracture at L3 was clear on an upper GI performed after her fall. He stated: “Clearly the CT that she had done in May did state that the finding on reviewing the upper GI was new from that point and therefore may not have been related to the fall at work on February 24, 1998.” In a report dated July 15, 1998, Dr. Cassiano again discussed the CT scan and stated: “Upon review of the results, it was my determination that her back pain and compression fractures had been the result of a recent fall she had on February 24, 1998.”

By decision dated March 18, 1999, the Office hearing representative denied the claim on the grounds that the medical evidence failed to establish that the accepted employment incident of February 24, 1998 caused appellant’s compression fractures. The Office hearing representative stated: “Neither physician [Drs. Rowe or Cassiano] provides sufficient medical rationale to support the opinions rendered, explains the delayed symptomatology experienced, or explains, refutes or correlates the objective test results of the claimed injury of February 24, 1998.”

In a letter dated September 10, 1999, appellant requested reconsideration and submitted new evidence.

In a July 10, 1998 report, Dr. Cheryl Viglione, a Board-certified radiologist, compared the preliminary upper GI film dated March 6, 1998 with the April 14 and 17, 1998 test findings. She stated: “The compression fractures which are evident at the L3 and L4 levels on the April 17, 1998 film are not convincingly demonstrated on the March 6, 1998 preliminary film. This concurs with previous readings.”

In an April 12, 1999 report, Dr. Carter stated that the February 24, 1998 accident could have produced the compression fractures in appellant's lumbar spine and noted that she gave no other history of stress that could have produced such fractures. He added that it was not unusual that appellant's fractures were not seen on the GI film because frequently a month will pass before a definite compression fracture will be seen on a plain x-ray. Dr. Carter then stated that, given appellant's history and her injury on February 24, 1998, her compression fractures involving the third and fourth vertebrae were most likely caused by the employment injury. He noted a third compression fracture involving the fifth lumbar vertebra was later found.

On an April 20, 1999 Dr. Cassiano stated that he really could not comment on the absence of the L3 compression fracture on the March 6, 1998 films or on Dr. Viglione's radiology report. He added: "Not being a radiologist, I really cannot explain why it was not there, if indeed, that is when it did occur."

In a July 16, 1999 report, Dr. Rowe reiterated that appellant's compression fractures occurred during the fall onto her buttocks at work, as she experienced back pain over the next couple of days and the fractures were obvious when Dr. Carter conducted the MRI scan.

The case file was referred to the Office medical adviser along with specific questions on whether the compression fractures were evident on the x-ray of appellant's upper GI tract. In a report dated October 21, 1999, the Office medical adviser replied:

"This is undoubtedly a case of spontaneous vertebral compression fractures due to osteoporosis, in a postmenopausal woman, who is predisposed to the fractures.

"Additionally, a third compression fracture in the fifth lumbar vertebra has occurred, per Dr. Philips letter of April 12, 1999.

"Obviously claimant's alleged fall on February 24, 1998 could not have caused the fracture, since the March 6, 1998 films (x-rays) do not show the fractures.

"There is no report of a study for osteoporosis in the file, but Dr. Rowe's letter of July 16, 1999 reports treating [appellant] with 'calcium and vitamin D' which is a standard treatment for osteoporosis.

"More likely, [appellant's] compression fractures occurred when she had onset of flank pain and was seen by Dr. Cassiano on April 18, 1998. The first x-rays showing the fractures were made on April 17, 1998. "These fractures have occurred spontaneously, without trauma and are due to senile osteoporosis."

On October 27, 1999 the Office denied modification of the Office hearing representative's March 18, 1999 decision. In an accompanying memorandum, a senior claims examiner found that the medical reports submitted by Drs. Rowe, Cassiano and Carter, attributing the compression fractures to the February 24, 1998 fall, did not contain rationale on causal relation, and were therefore insufficient to meet appellant's burden of proof.

In this case, Drs. Cassiano, Rowe and Carter in some form related appellant's compression fractures at L3 and L4 to her February 24, 1998 fall at work. The Office medical adviser disagreed with the physicians of record on the cause of the fractures, finding that this was a case of spontaneous vertebral compression fractures due to senile osteoporosis. He opined that the absence of the compression fractures on the March 6, 1998 GI film clearly indicated that the fall on February 24, 1998 could not have caused the condition.

Section 8123(a) of the Act⁹ provides that, when there is a disagreement between a physician making the examination for the United States and the physician of the employee, a third physician shall be appointed to make an examination to resolve the conflict.¹⁰ When there are opposing reports of virtually equal weight and rationale, the case must be referred to an impartial medical specialist, pursuant to section 8123(a) of the Act, to resolve the conflict in the medical evidence.¹¹

Accordingly, the case will be remanded to the Office for resolution of the conflict. On remand, the Office should refer appellant, along with the case record and a statement of accepted facts, to an appropriate specialist for a rationalized opinion on the issue in conflict. After such further development as the Office deems necessary, it should issue an appropriate decision.

⁹ 5 U.S.C. § 8101 *et seq.*

¹⁰ *See* 5 U.S.C. § 8123(a); *Melvina Jackson*, 38 ECAB 443 (1987).

¹¹ *William C. Bush*, 40 ECAB 1064, 1075 (1989).

The decisions of the Office of Workers' Compensation Programs dated October 27 and March 18, 1999 are set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, DC
March 16, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member