U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERYL A. MALONE and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Anchorage, AK

Docket No. 02-724; Submitted on the Record;
Issued November 8, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an employment-related injury to her lower back on November 17, 1999.

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 an employment-related injury to her lower back on November 17, 1999. 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. §§ 8101-8193.

[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 November 18, 1999 appellant, then a 36-year-old window clerk, filed a notice of traumatic injury, Form CA-1, alleging that on November 17, 1999, while in the performance of duty, she developed low back pain after lifting several heavy boxes throughout the day. In support of her claim, appellant submitted form reports and treatment notes dating from November 18 to December 21, 1999 from Dr. Robert J. Bosweld, which noted that appellant had developed low back pain after lifting heavy boxes on November 17, 1999 and indicated by check mark that appellant's diagnosed back strain was causally related to her employment. Appellant also submitted a December 9, 1999 report from Dr. Christian Peterson, who noted that in addition to having lifted boxes on November 17, 1999, appellant had a past history of back injuries and that a magnetic resonance imaging (MRI) scan from June 19, 1996 revealed a herniated nucleus pulposus at L5-S1 that had been stable from 1993. He opined that appellant's back pain was probably stemming from that disc and that she needed a repeat MRI scan and physical therapy.

In a decision dated March 27, 2000, the Office denied appellant's claim on the grounds that despite a December 9, 1999 request for additional information, appellant had not submitted sufficient evidence to establish that the work incident occurred as alleged. The Office noted that while appellant stated that she lifted heavy boxes, she did not state what they weighed, how she lifted them or whether she carried them. In addition, the Office noted that the record contained evidence that on one occasion, appellant asked a coworker to assist her by lifting a heavy box, calling into question whether she ever personally lifted any heavy boxes at all.

By letter dated April 10, 2000, appellant requested an oral hearing before an Office representative and submitted additional evidence in support of her request. In a decision dated February 12, 2001, an Office hearing representative noted that between August 1993 and April 1997, appellant had sustained six injuries to her back in the performance of duty, all of which had been accepted by the Office for sprain/strain injuries. The Office hearing representative then affirmed the prior decision, finding that the evidence of record supported neither that the November 17, 1999 incident occurred, nor that appellant had sustained an injury as a result of the 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 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

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

this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[5]

In this case, appellant stated on her claim form and in her hearing testimony, that on November 17, 1999, in the performance of her duties as a front counter window clerk, she received at least 10 heavy boxes from customers. She explained that she lifted each box on and off of the scales and that she recalled receiving packages weighing at least 30 pounds and as much as 50 to 60 pounds. After weighing and metering each box, she carried the parcels to a cart located approximately 10 to 20 feet away. Appellant explained that the other window clerk had a 20-pound lifting restriction, so she was required to lift the heavier parcels. In addition, while another gentleman, John Himmelright, was also present, he was busy passing out mail during the morning and was not always available to help. The record contains a written statement from Mr. Himmelright, confirming that on November 17, 1999, at approximately 1:00 pm appellant asked him if he would lift a heavy parcel for her, which he did. Mr. Himmelright did not indicate whether he had lifted any other parcels for appellant that day. The record also contains a written statement from appellant's supervisor, who confirmed that on Wednesday November 17, 1999, appellant was assigned to carry parcels accepted at the front counter to a nutting rack approximately 20 to 50 feet from the counter line. He stated that while she completed her workday without any indication that she had injured herself, on Thursday November 18, 1999 she called in stating that she had back pain radiating into her leg and would be seeking medical treatment that day. Finally, the record contains several medical reports and treatment notes dated November 18, 1999 which indicate that appellant complained of developing back pain after having lifted heavy boxes the previous day. The Board finds that the evidence of record is sufficient to establish an incident as alleged on November 17, 1999.

The question, therefore, becomes whether the November 17, 1999 incident caused or aggravated the back condition for which she seeks compensation.

Causal relationship is a medical issue[6] 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,[7] must be one of reasonable medical certainty[8] 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.[9]

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

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

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

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

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

The relevant medical evidence of record consists of the reports from Drs. Bosweld and Peterson, discussed above and several reports from Dr. Lynn L. Staker, an orthopedic surgeon. In reports dated May 24, June 20 and July 21, 2000, Dr. Staker noted that appellant had a history of having sustained multiple back injuries and that she had a herniated disc at L5-S1, as confirmed by an MRI scan from 1993, but did not discuss the cause of appellant's condition. In a report dated August 25, 2000, Dr. Staker attempted to explain why she felt appellant's condition was related to her employment, stating:

> "[Appellant] did not have these problems until the injury on November 17, 1999. At that point she developed pain in the lower back and pain down the left leg and has had trouble since that time. [An] MRI [scan] showed a protruded lumbar disc. Findings are consistent. I agree completely with Dr. Levine's opinion. I did review the medical records and there [is] every indication that this injury caused injury to the disc. Once somebody injures a disc and has sciatica, they [are] probably going to have that the rest of their life."

In a follow-up report dated November 3, 2000, Dr. Staker diagnosed protruded disc at L5-S1 with ongoing back pain and sciatica and stated:

> "In my note dated August 25, 2000, I stated that it was my opinion on November 17, 1999 she was lifting heavy boxes and developed significant pain in the lower back, pain down her left leg. She stated that she could hardly move the next day, and she was off the job for a period of time. [Appellant's] overall situation has been more symptomatic and more difficult for her to function since that time. It [is] been my opinion that she is not capable of returning to her job as a postal clerk which does require quite a bit of heavy lifting. [Appellant] could work at a sedentary to light type of capacity but not her original job and the circumstances is that she was functioning relatively well until that injury on November 17, 1999. The original injury in 1993 was an on-the-job injury, so I do [not] really see what the problem is with her, because its all been part of the original injury where she did herniate a lumbar disc and that situation was significantly aggravated on November 17, 1999.
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> When asking me how that injury could worsen the situation, all I can say is that it did. Almost all the injuries that people have with a herniated disc some incident such as lifting, bending or twisting causes that. It just happens."

The medical record in this case lacks a well-reasoned narrative from a physician relating appellant's low-back condition to the November 17, 1999 employment duties. Dr. Bosweld expressed his opinion on causal relationship only by checkmark[10] and Dr. Peterson did not address the cause of appellant's back conditions. While Dr. Staker clearly stated that he believed appellant's low-back condition had been significantly aggravated by her employment duties on November 17, 1999, he did not explain his conclusions but simply stated that it just happens.

[10] 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).

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.[11] Additionally, the Board notes that in this case the record contains no medical 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 sustained at least one and as many as six prior employment-related injuries to her back between 1993 and 1997. Drs. Peterson and Stake noted a history of prior employment-related back injuries and the record contains a statement of accepted facts dated July 6, 1994, indicating that the Office did accept that appellant sustained an employment-related back strain in 1993. The record also contains the statement of the Office hearing representative that the Office has accepted six prior back injury claims between 1993 and 1997. The Board will set aside the Office's February 12, 2001 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 conditions. Upon return of the case record, the Office should double this case file with all of appellant's injury claims for the same parts of the body.[12] Following such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim.

[11] *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).

[12] 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.

The February 12, 2001 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
November 8, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member