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ALVERSIA VERVEER, Appellant	)	
	)	
and	)	Docket No. 04-814
	)	Issued: June 18, 2004
DEPARTMENT OF JUSTICE, FEDERAL	)	
BUREAU OF PRISONS, Tallahassee, FL,	)	
Employer	)	
	)	

Case Submitted on the Record

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

On February 10, 2004 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated March 27 and November 7, 2003, denying her claim for July 2, 2002 traumatic injuries. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.¹

The issue is whether appellant has established that she sustained an injury in the performance of duty on July 2, 2002.

¹ Following issuance of the November 7, 2003 decision, appellant submitted additional evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

FACTUAL HISTORY

On July 5, 2002 appellant, then a 47-year-old inmate systems officer, filed a claim for injuries to the left upper and lower extremities, right shoulder, neck, lumbar spine and a headache sustained on July 2, 2002 when the wing of a desk she was leaning on collapsed. Appellant asserted that while instructing coworker Irene Compton in computer transactions, she leaned on the wing of a computer desk which was not bolted down and the “wing fell over to the floor.” She twisted to try to break her fall but fell and “crashed into desk wing.” Appellant reported the injury to her supervisor on July 2, 2002 and stopped work on July 8, 2002.² In a July 19, 2002 letter, Bill Keith, an employing establishment safety manager, controverted appellant’s claim, alleging that Ms. Compton told him that the claim was fraudulent.

In a July 5, 2002 report, Dr. Kathryn Davis, an attending Board-certified family practitioner, related appellant’s account that while at work on July 2, 2002, “she propped her weight on a desk that fell causing her to fall to the ground.” She related appellant’s complaints of pain throughout the left side of her body, lumbar spine, neck and head. On examination Dr. Davis found pain on palpation of the left trapezius muscle and lumbar spine and a small bruise on the left shin. She diagnosed “[l]eft-sided body pain secondary to fall.” On July 9, 2002 appellant again saw Dr. Davis, newly asserting that she sustained right shoulder and left-sided thoracic spinal injuries on July 2, 2002. Dr. Davis noted that appellant weighed 262 pounds. Dr. Davis commented that the “long list of injuries that [appellant] reports hardly seems consistent with her minor fall; however, [appellant] insist[ed] that she [was] injured in all above-mentioned areas.” Dr. Davis submitted notes through July 25, 2002 recommending continued medication.³

In reports from October 1 to 28, 2002, Dr. Ricardo Ayala, a Board-certified psychiatrist and neurologist, related appellant’s account of 15 years of chronic back and neck pain exacerbated by 1995, 1997 and July 2, 2002 workplace incidents. Dr. Ayala noted that appellant weighed 273 pounds. He diagnosed chronic musculoskeletal or myofascial pain of unknown origin and suggested “therapy, counseling appropriate diet and pain management.”

In a January 22, 2003 letter, the Office advised appellant of the type of additional evidence needed to clarify apparent inconsistencies in the factual evidence. Appellant responded by February 13, 2003 letter, asserting that Ms. Compton did not tell Mr. Keith that her claim was fraudulent and that she reported the injury on July 2, 2002 to Wanda Waters, a safety manager and showed her bruises on her legs. She submitted a February 10, 2003 report from Dr. Gregg Alexander, an attending Board-certified orthopedic surgeon, diagnosing chronic neck and back pain related to cervical, thoracic and lumbar disc protrusions sustained in a 1992 motor vehicle accident and 1995 and 1997 injuries. In a February 24, 2003 report, Dr. Heather

² The record indicates that as of July 8, 2002, appellant was in leave without pay status due to a July 8, 1997 back injury under Claim No. 06-0681447. This claim is not before the Board on the present appeal.

³ Appellant also submitted a July 25, 2002 chart note by Cathy Bracher, a nurse practitioner. Lay individuals such as nurse practitioners are not competent to render a medical opinion. See *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

Zawahry, a resident in family practice, stated that based on appellant's account of events, "the alleged incident contributed to her condition."

By decision dated March 27, 2003, the Office denied appellant's claim on the grounds that she had not established that the July 2, 2002 injury occurred as alleged. Appellant then requested reconsideration by an August 12, 2003 letter, asserting that Ms. Compton did not "deny seeing [appellant] fall." She submitted an August 5, 2003 statement by Ms. Compton that "[o]n or about July 2, 2002, [she] was working in the [employing establishment] [m]ailroom with" appellant and was "aware of [her] fall" but did "not know if any injuries were sustained. [She] did see [appellant] walk out of the mail room later in the day."

In June 6 and July 3, 2003 reports, Dr. Alexander found appellant totally and permanently disabled from her date-of-injury position due to multiple disc protrusions.⁴

In an August 28, 2003 letter, the Office requested that the employing establishment obtain witness statements from Ms. Compton and Ms. Waters. In response, Mr. Keith submitted a September 22, 2003 letter asserting that Ms. Compton could not provide any additional information and that Ms. Waters was not asked to provide a statement as she no longer worked at the employing establishment. Mr. Keith asserted that appellant could not have seen Ms. Waters as alleged on July 2, 2002 as he, and not Ms. Waters, performed the safety inspection that day.

By decision dated November 7, 2003, the Office denied modification, finding that inconsistencies in the factual evidence made it highly doubtful that appellant sustained a July 2, 2002 injury as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act⁵ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while 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.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in

⁴ Dr. Alexander noted that appellant underwent anterior cervical discectomy and fusion at C3-4 after a 1997 injury.

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁸ 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.⁹

ANALYSIS

Appellant claimed that on July 2, 2002 she sustained injuries to the entire left side of her body, right shoulder, neck and back when the wing of a desk on which she was leaning collapsed to the floor, causing her to fall on top of it. She asserted that this incident was witnessed by Ms. Compton, the coworker she was assisting at the time she fell. The Office denied appellant's claim as inconsistencies in the factual evidence made it doubtful that the July 2, 2002 incident occurred as alleged. However, the evidence of record indicates that appellant did fall on July 2, 2002 and reported the incident that day. Ms. Compton stated in an August 5, 2003 note that she was working with appellant on July 2, 2002 and was "aware of [her] fall." Also, the July 5, 2002 claim form demonstrates that appellant reported an injury to her supervisor on July 2, 2002.¹⁰ The Board, therefore, finds that appellant has submitted sufficient evidence to establish that she fell at work on July 2, 2002.

As appellant has established the July 2, 2002 fall as factual, the medical evidence must be reviewed to determine whether that fall caused the claimed injuries. Appellant submitted statements from two attending physicians mentioning a July 2, 2002 incident.¹¹ Dr. Davis, a Board-certified family practitioner, described the July 2, 2002 incident in a July 5, 2002 report and diagnosed "[l]eft sided body pain secondary to fall." However, pain is considered a symptom, not a diagnosis and does not constitute a basis for payment of compensation in the absence of objective findings of disability.¹² Although Dr. Davis found a small bruise on appellant's left shin, she did not opine that the contusion was caused by the July 2, 2002 fall. Dr. Davis added on July 9, 2002 that appellant's complaints were inconsistent with a minor fall, which casts doubts on the reliability of appellant's description of her symptoms. Dr. Ayala, a Board-certified psychiatrist and neurologist, submitted October 2002 reports diagnosing chronic musculoskeletal pain of unknown origin. He mentioned an unspecified July 2, 2002 workplace incident but did not attribute any injury to it. Thus, the medical evidence of record does not establish that appellant sustained any injury as a result of the July 2, 2002 fall.

⁸ Gary J. Watling, 52 ECAB 278 (2001).

⁹ Deborah L. Beatty, 54 ECAB ____ (Docket No. 02-2294, issued January 15, 2003).

¹⁰ Appellant noted in a February 13, 2003 letter that she reported the injury on July 2, 2002 to Ms. Waters, a safety specialist. Although the employing establishment stated that appellant could not have encountered Ms. Waters as alleged on that day, the July 5, 2002 claim form shows that appellant reported the incident to her supervisor on July 2, 2002.

¹¹ Dr. Alexander, an attending Board-certified orthopedic surgeon, did not mention the alleged July 2, 2002 incident. Dr. Zawahry, an attending medical resident, opined that an unspecified "alleged incident contributed to [appellant's] condition" but did not mention the July 2, 2002 fall.

¹² See John L. Clark, 32 ECAB 1618 (1981); Huie Lee Goad, 1 ECAB 180 (1948).

CONCLUSION

The Board finds that appellant has established that the July 2, 2002 incident occurred as alleged. The Office's March 27 and November 7, 2003 decisions are, therefore, modified to reflect the acceptance of the July 2, 2002 incident as factual. The Board further finds that appellant failed to establish that she sustained an injury resulting from the July 2, 2002 fall as she submitted insufficient medical evidence to establish causal relationship.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated November 7 and March 27, 2003 are affirmed as modified.

Issued: June 18, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member