

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDITH A. WHITFIELD and DEPARTMENT OF THE NAVY,
NAVAL SUPPORT ACTIVITY, New Orleans, LA

*Docket No. 99-794; Submitted on the Record;
Issued December 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on March 29, 1996, as alleged.

The Board has duly reviewed the case record in the present appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on March 29, 1996, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 and that the claim was filed within the applicable time limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty⁴ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

⁶ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

There is no dispute that appellant is a federal employee, that she timely filed her claim for compensation benefits and that the incident occurred as alleged. Appellant, an office automation assistant, claimed that on March 29, 1996 while bowling she sustained a “herniated dis[c] in her neck which pinched nerves in her right arm and [caused] numbness and pain in fingers.” However, the Office of Workers’ Compensation Programs, in decisions dated September 8, 1997 and September 2, 1998, found that the evidence was insufficient to establish that an injury resulted from the incident.

The Board finds that appellant has not established that the March 29, 1996 employment incident resulted in an injury. To support the claim, appellant submitted an October 31, 1996 report of operation by Dr. Daniel W. Moore, a Board-certified neurosurgeon, who described the operation on that day as anterior cervical discectomy at C4-5; anterior cervical fusion with iliac crest bone graft at C4-5; anterior cervical discectomy at C6-7 with anterior cervical fusion with iliac crest bone graft at C6-7; harvesting of iliac crest bone graft. Appellant also submitted a November 3, 1996 discharge summary by Dr. Moore, who stated that, “[appellant] was admitted and underwent an anterior cervical discectomy at C4-5 and C6-7 and Orion plating at both levels”; an October 22, 1996 radiology report by Dr. R. Darr McKeown, a Board-certified radiologist, who interpreted the x-ray of the cervical spine as revealing a large posterocentral herniation of the C4-5 and C6-7 discs causing significant deformity of the cord and a small posterocentral herniation at C3-4; and an October 28, 1996 report by Dr. Lawrence B. Schlachter, a Board-certified neurosurgeon, who saw appellant that day for evaluation of neck and right arm pain and stated that a magnetic resonance imaging (MRI) scan revealed two large herniated cervical discs at C4-5 and C6-7. Further, appellant submitted Dr. Moore’s office notes covering the period October 28, 1996 through May 21, 1997; an August 26, 1997 report and office notes by Dr. Richard M. Klaus, a Board-certified orthopedic surgeon, who stated that he examined appellant on June 17 and October 21, 1996 for right elbow pain for which he gave cortisone injections; an October 10, 1996 report by Dr. Gary Kaplan, a Board-certified neurologist, who stated that “[t]here is some slowing of the ulnar and median nerves on nerve conduction tests although this is not drastic and is suggestive but she also has polyphasia in the C6 root distribution which could indicate a cervical radiculopathy or a high brachial plexus cord lesion. No evidence for carpal tunnel syndrome, tardy ulnar palsy”; and an April 21, 1997 report by Dr. Kaplan who stated that an “MRI recently showed status post C4-5 and C6-7 fusions and showing now some central disc at C2-3 and C3-4.” Dr. Kaplan diagnosed “cervical radiculopathy, C6-7 irritable at the present time and this may be old C4-5 is also effected. This may be new or old. Rule out new HNP [herniated nucleus pulposus].” Moreover, appellant submitted a June 3, 1997 report by Dr. Bert A. Loftman, a Board-certified neurosurgeon, who stated that appellant was scheduled for surgery on June 9, 1997 for an anterior cervical discectomy and fusion at the C3-4 level. In a September 2, 1997 report, Dr. Loftman stated that he originally saw appellant on June 2, 1997, that appellant stated that in April 1996 she had neck and right arm pain while bowling, that she had prior surgery and that recent tests revealed a large C3-4 dis[c] herination for which she underwent surgery on June 9, 1997. Dr. Loftman’s June 9, 1997 operative report described the C3-4 anterior cervical fusion and discectomy; and Dr. Loftman’s June 2, 1997 report noted a diagnosis of C3-4 soft herniated dis[c], for which the doctor recommended surgery.

In the October 31, 1996 report of operation, Dr. Moore failed to provide a history of the March 29, 1996 incident, or to address a causal relationship between the incident and a

diagnosed condition. Therefore, Dr. Moore's report is insufficient to establish appellant's claim. As well, Dr. Moore's December 31, 1996 discharge summary failed to provide a history of the March 29, 1996 incident or to address the issue of causal relationship. The discharge summary is also insufficient to establish appellant's claim. In an October 22, 1996 radiology report, Dr. McKeown failed to provide a history of injury or to address the issue of causal relationship and is insufficient to establish appellant's claim. In an October 28, 1996 report Dr. Schlachter failed to provide a history of injury, diagnosed two herniated cervical discs but failed to causally relate the diagnosed condition to the March 29, 1996 incident. The October 28, 1996 report is insufficient to establish appellant's claim. In office notes covering the period October 28, 1996 through May 21, 1997, Dr. Moore failed to provide a history of injury, or to causally relate a diagnosed condition to the March 29, 1996 incident, making the notes insufficient to establish appellant's claim. In an August 26, 1997 response to the Office's request to appellant for additional information, Dr. Klaus failed to provide a history of injury, diagnosis or address a causal relationship between a diagnosed condition and the March 29, 1996 incident. In office notes on June 17 and October 21, 1996, Dr. Klaus mentioned appellant was bowling in April 1996, but failed to describe an employment incident and failed to causally relate a diagnosed condition to an employment incident. Therefore, the August 26 1997 and June 17 and October 21, 1996 office notes are insufficient to establish appellant's claim. In an October 10, 1996 report, Dr. Kaplan did not address a March 29, 1996 employment incident. In an April 21, 1997 neurological report, he also did not address a March 29, 1996 employment incident. Dr. Kaplan's October 10, 1996 and April 21, 1997 reports are insufficient to establish appellant's claim.

In a June 3, 1997 report, Dr. Loftman failed to provide a history of the March 29, 1996 employment incident or to causally relate a diagnosed condition to the incident. In a September 2, 1997 report, Dr. Loftman also failed to provide a history of the March 29, 1996 employment incident or to causally relate a diagnosed condition to the March 29, 1996 employment incident. Neither Dr. Loftman's June 3, 1997 nor his September 2, 1997 report are sufficient to establish appellant's claim. In a June 9, 1997 operative report, Dr. Loftman failed to provide a history of the March 29, 1996 employment incident, or to address a causal relationship between the incident and a diagnosed condition. In a June 2, 1997 report, Dr. Loftman also did not provide a history of the March 29, 1996 employment incident or to causally relate a diagnosed condition to the incident. Therefore, the June 2 and 9, 1997 reports are insufficient to establish appellant's claim.

In this case, there is no rationalized medical opinion evidence supporting a causal relationship between appellant's March 29, 1996 employment incident and her diagnosed condition of herniated disc. The Office advised appellant of the type of evidence needed to establish her claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated September 2, 1998 is hereby affirmed.

Dated, Washington, DC
December 7, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member