

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA K. WHEELER *and* DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF PRISONS, Springfield, Mo.

*Docket No. 96-2578; Submitted on the Record;
Issued December 4, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained a lumbosacral strain condition or disability causally related to the alleged injury of April 6, 1996.

On April 15, 1996 appellant, then a 47-year-old correctional officer filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that the injury to her lower back was employment related. Appellant stated that on April 6, 1996, while in the performance of duty, she pulled boxes of tissues stacked on top of each other with her arms extended over her head. She indicated that these boxes stood over 5 feet tall and weighed around 75 pounds each. The record shows that appellant stopped work on April 9, 1996 and did not return to work until April 21, 1996.¹

In support of her claim, appellant submitted various verification of treatment notes, progress reports and appointments slips from her attending physical therapist dated intermittently from April 9 through June 5, 1996. These documents diagnosed appellant with low back pain.

In a report to the employer dated April 12, 1996, Dr. Naomi Purdy, diagnosed appellant with lumbosacral sprain, strain, recommended heat to the affected area, prescribed physical therapy and medication. She noted that appellant was unable to work for a week. Again, in a report to the employer dated April 19, 1996, Dr. Purdy diagnosed appellant with lumbosacral strain, recommended physical therapy and noted that appellant was able to return to work with no limitations.

¹ The record reveals a report of termination of disability and/or payment (Form CA-3) dated June 7, 1996, which indicated that appellant stopped work due to the alleged injury of April 6, 1996 on April 9, 1996, returned to her regular-duty position on April 21, 1996 and received a continuation of pay commencing April 10 through April 18, 1996 in the amount of \$950.88 during the time period appellant was without sick or annual leave.

In a June 14, 1996 letter, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office also advised appellant to address why the physical therapist documents provided an onset of pain as of Easter Sunday, and the Form CA-1 indicated that appellant was injured on April 6, 1996. Appellant was also directed to address the impact of her automobile accident on her condition and when or if the physical therapist treated appellant for the automobile accident. The Office particularly requested that appellant submit a physician's reasoned opinion addressing in detail the relationship of the disability to the incident of April 6, 1996, which he/she believed to have been the cause of appellant's diagnosed condition of lumbosacral sprain, strain. Appellant was allotted 30 days within which to submit the requested evidence.

In response, appellant submitted her own statement regarding the alleged injury of April 6, 1996 and automobile accident of May 3, 1996. Appellant also submitted additional verification of treatment notes, progress reports and appointments slips from her attending physical therapist.

By decision dated July 19, 1996, the Office denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to support the fact of an injury in this case. In an accompanying memorandum, the Office found that the claimed events, incidents or exposures occurred at the time, place and in the manner alleged; however, medical evidence sufficient to establish that the claimed condition of lumbosacral sprain, strain or disability resulted from the alleged injury of April 6, 1996, was not submitted.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a lumbosacral sprain, strain condition or disability causally related to the alleged injury of April 6, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that 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 timely filed within the applicable time limitation period of the Act, 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether a federal employee has sustained an 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 which must be considered in

² 5 U.S.C. §§ 8101-8193.

³ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event, incident or exposure, the employee must submit rationalized medical opinion, based on a complete factual and medical background, supporting such a causal relationship.⁶

Appellant has not submitted any medical evidence establishing that her diagnosed lumbosacral sprain, strain condition is causally related to the employment factors or conditions. The only support for appellant's diagnosed lumbosacral sprain, strain condition or disability is the testimony of her attending physical therapist's, through, various treatment of verification, progress notes, and appointment slips. The question of causal relationship in this case as it relates to a diagnosis of lumbosacral sprain, strain is a medical one. A physical therapist is not a "physician" within the meaning of the Federal Employees' Compensation Act and is therefore, not competent to give a medical opinion.⁷ Therefore, the physical therapist's opinion is of no probative value.⁸

Furthermore, neither the medical reports dated April 12, and 19, 1996 from Dr. Naomi Purdy, nor the physical therapist's documents submitted, presented an actual awareness of appellant's specific job duties, history of injury or contained a rationalized medical opinion addressing how or why appellant's condition was employment related, or if, and to what extent, appellant's automobile accident of May 3, 1996, affected appellant's diagnosed condition of lumbosacral sprain, strain.⁹ There was no medical connection between the appellant's diagnosed lumbosacral sprain, strain condition and factors of appellant's federal employment provided.¹⁰

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *see also* 20 C.F.R. § 10.110(a).

⁷ 5 U.S.C. § 8101(2) states in part: "physician's includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law. ***"

⁸ *Id.*; *see also* *Barbara J. Williams*, 40 ECAB 649 (1989); *Jane A. White*, 34 ECAB 515 (1983).

⁹ *See* *Steven R. Piper*, 39 ECAB 312 (1987) (finding that rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasoned medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant; *see also* *Victor J. Woodhams*, *supra* note 4.

¹⁰ *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also* *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

Appellant was advised of the deficiencies in her claim on June 14, 1996, and afforded the opportunity to provide supportive evidence, however, no medical evidence addressing whether the claimed medical lumbosacral sprain, strain condition or disability is causally related to the alleged injury of April 6, 1996, was submitted.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Thus, as appellant failed to provide rationalized medical opinion evidence establishing that she sustained a medical condition or disability causally related to the April 6, 1996 employment injury, the Office properly denied appellant's claim for compensation.¹¹

The decision of the Office of Workers' Compensation Programs dated July 19, 1996 is affirmed.

Dated, Washington, D.C.
December 4, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹¹ See *Robert J. Krstyen*, 44 ECAB 227 (1992) (finding that appellant failed to submit sufficient medical evidence to establish that specific work factors caused or aggravated his back condition).