U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET IRENE VINOT and DEPARTMENT OF VETERANS AFFAIRS, SHERIDAN VETERANS HOSPITAL, Sheridan, Wyo.

Docket No. 96-2544; Submitted on the Record;
Issued September 24, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury to her right ankle and lower leg in the performance of duty on April 10, 1995.

On April 13, 1995 appellant, then a 58-year-old nursing assistant filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that "constant walking, pivoting to put patients in wheelchairs, on and off commode, stooping to put socks and shoes on, pushing patients from NHCA [nursing home care unit] to x-rays in wheelchairs, [and] lifting patients," in the performance of duty on April 10, 1995, caused her to twist her ankle and reinjure a recently healed pulled ligament in her right ankle and lower leg.

The record shows that appellant requested sick leave due to her alleged injury on April 11, and 12, 1995, and sought medical treatment from the employing establishments physician, Dr. Pierre G. Carricaburu, a Board-certified family practitioner on April 14, 1995. Dr. Carricaburu placed appellant on limited-duty status with limited walking, no lifting, kneeling, stairs, stooping or thrusting, and advised her to return in one week for a reevaluation.

By correspondence dated September 12, 1995, the employing establishment forwarded to the Office of Workers' Compensation Programs two medical reports from Dr. Craig McLaws, D.P.M., [Doctor of Podiatric Medicine] dated February 27 and March 16, 1995. Dr. McLaws stated in his February 27, 1995 report that appellant had "pain onto the medial side of the ankle," that "she was off it a lot and it has been swollen. It just is not getting any better." He indicated that there was "pain with palpation at the base tip of the on the medial malleolus with palpation of the tendons along the tarsal tunnel. No shooting pain with percussion. Pain with ? to the medial malleolous especially on the tip of the bone." Dr. McLaws assessment: Stress fracture medial malleoulus on the right foot," and suggested the use of an ankle brace and if this did not help, then appellant could consider using a walking cast. Dr. McLaws' March 16, 1995 report, noted continued pain in the right ankle and right leg and reiterated that pain was going up appellant's leg with pain proceeding back into the heel.

In a February 25, 1996 letter, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such. The Office particularly requested that appellant submit a physician's reasoned opinions addressing the relationship of her claimed condition and specific employment factors. Appellant was allotted 30 days within which to submit the requested evidence.

Appellant responded to the Office's February 25, 1996 letter by presenting her own statements regarding the alleged incident of April 10, 1995. No medical evidence of any kind was submitted by appellant to support the fact that she sustained an injury on April 10, 1995, as alleged.

By decision dated May 14, 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 noted that the evidence of file supported the fact that the claimed event, incident or exposure occurred at the time, place and in the manner alleged; however, a medical condition resulting from the accepted trauma or exposure was not supported by the medical evidence of file. The Office moreover, noted that the medical reports prepared by Dr. McLaws on February 27 and March 16, 1995, predated appellant's alleged injury of April 10, 1995.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury to right ankle and lower leg in the performance of duty on April 10, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that the essential elements of his or her claim[2] 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

In order to determine whether a federal employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman,* 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

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

[6] *David J. Overfield,* 42 ECAB 718 (1991); *Delores C. Ellyett,* 41 ECAB 992 (1990); *Victor J. Woodhams* 41 ECAB 345 (1989).

established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged but failed to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[9]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or condition.[10] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[11]

In this case, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, there is no rationalized medical opinion evidence to support the fact that appellant suffered an injury or disability causally related to any specific work factors. The only medical evidence of record regarding the April 10, 1995 incident, is a medical release for a limited-duty form from the employing establishment's physician, Dr. Carricaburu, dated April 14, 1995. Dr. Carricaburu did not provide a history of injury; results of any diagnostic tests; a diagnosis; his reasoned medical opinion, supported by objective findings, as to the medical connection between appellant's current condition or disability and factors of appellant's federal employment; or to the medical connection between appellant's prior ankle condition with factors of her current condition or disability and employment factors. Furthermore, as indicated by the Office, the only other medical evidence submitted to support the fact that an injury occurred predates the April 10, 1995, accepted trauma or exposure and cannot be considered probative medical evidence. Consequently, the evidence of record is not sufficient to establish that appellant sustained an injury while in the performance of duty on April 10, 1995, as she has not submitted any medical evidence addressing how or why the twisting of her ankle because of her "constant walking, pivoting to put patients in wheelchairs, on and off commode, stooping to put socks and shoes on, pushing patients from NHCA [nursing home care unit] to x-rays in wheelchairs, [and] lifting patients," caused or aggravated any particular medical condition or disability.

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

[8] *Id*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury. *i.e.,* a physical impairment resulting in the loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[10] *See Elaine Pendleton, supra* note 5.

[11] *See Carlone, supra* note 7.

The Board has held that 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.[12] Causal relationship must be established by rationalized medical opinion evidence and appellant has failed to submit such evidence in the present case.[13] The Office, therefore, properly denied appellant's claim for compensation.[14]

The decision of the Office of Workers' Compensation Programs dated May 14, 1996 is affirmed.

Dated, Washington, D.C.
September 24, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member

[12] *See Id., Victor J. Woodhams, supra* note 6.

[13] *See Id. (Woodhams)*

[14] Appellant has submitted additional evidence on appeal. However, the Board may not consider such evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from having such evidence considered by the Office as part of a reconsideration request.