

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAY VINCENT and DEPARTMENT OF HEALTH & HUMAN SERVICES,
NATIONAL INSTITUTES OF HEALTH, Bethesda, MD

*Docket No. 97-2688; Submitted on the Record;
Issued November 15, 1999*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained a back injury while in the performance of duty on March 10, 1997.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a back injury while in the performance of duty on March 10, 1997.

On March 10, 1997 appellant, then a 41-year-old contract specialist, filed a traumatic injury claim (Form CA-1) alleging that on that date she strained/sprained her lower back while moving her personal computer closer to a fluorescent desk light due to the poor lighting in her cubicle. Appellant stopped work on that date. Appellant's claim was accompanied by medical evidence.

By letters dated April 23, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised appellant to submit medical and factual evidence supportive of her claim. By letter of the same date, the Office advised the employing establishment to submit factual evidence regarding appellant's claim.

By decision dated July 7, 1997, the Office found the evidence of record insufficient to establish that appellant sustained an injury as alleged. In a July 10, 1997 letter, appellant requested reconsideration of the Office's decision accompanied by medical and factual evidence.

By decision dated August 22, 1997, the Office denied appellant's request for modification based on a merit review of the claim.

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, that the claim was timely filed within the applicable time limitations 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.² 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.³

In order to determine whether an employee actually 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 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.⁴ In this case, the March 10, 1997 progress notes from a registered nurse, whose signature is illegible, provide contemporaneous support for appellant's account of what happened on March 10, 1997 inasmuch as they indicate that appellant strained her lower back when she pulled her computer closer to the light. Further, the April 17, 1997 treatment notes of a physician whose signature is illegible indicated that appellant had been off work since March 11, 1997, which was one day after the alleged incident, due to a back injury. Although Joyce E. Sweasy, an employing establishment chief, stated in response to appellant's claim, that no one saw appellant move the computer and that appellant's action was willful in that she had given appellant explicit instructions not to move or lift anything that may cause an injury,⁵ the Board finds that appellant's statement and the progress notes of the registered nurse and physician provide a consistent history of injury. Further, the medical treatment received by appellant on the date-of-injury provides contemporaneous evidence of record to support that the incident occurred at the time, place and in the manner alleged.⁶

The second component 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 or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁷ In the instant case,

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ The record reveals that appellant sustained a back injury on January 3, 1997.

⁶ *Constance G. Patterson*, 41 ECAB 206 (1989); *Julie B. Hawkins*, 38 ECAB 393 (1987).

⁷ 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

appellant has submitted no rationalized medical evidence establishing that she sustained a medical condition causally related to the March 10, 1997 employment incident.

Regarding appellant's back injury, the March 10, April 10 and 17, 1997 treatment notes of the registered nurse whose signature is illegible have no probative value inasmuch as a nurse is not considered a "physician" under the Federal Employees' Compensation Act and, therefore, is not competent to give a medical opinion.⁸

The medical treatment notes covering the period April 17 and May 12, 1997 of the physician whose signature is illegible are insufficient to establish appellant's burden inasmuch as they failed to provide a diagnosis and to explain how or why the diagnosed condition was caused by the March 10, 1997 employment incident.

In a May 9, 1997 medical evaluation, Dr. William J. Lauretti, a chiropractor, indicated appellant's physical restrictions, subjective and objective findings and treatment. Under section 8101(2) of the Act,⁹ "[t]he term 'physician' includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation of the spine as demonstrated by x-ray to exist and subject to regulation by the Secretary."¹⁰ If a chiropractor's reports are not based on a diagnosis of subluxation as demonstrated by x-ray to exist, they do not constitute competent medical evidence to support a claim for compensation.¹¹ Because Dr. Lauretti's medical evaluation failed to diagnose subluxation by x-ray, it is insufficient to establish appellant's burden.

Appellant submitted a May 27, 1997 medical report of Dr. L.B. Stansbury, an employing establishment physician, revealing that based on a review of medical records, there was no objective clinical information from either a strictly medical or chiropractic viewpoint regarding the period April 14 through 22, 1997. Dr. Stansbury stated that there was no information on the effects of appellant's clinical status at that time on her routine life activities, which may have shed light either on her functional limitations during that period or on Dr. Lauretti's medical rationale in asking that appellant be excused from duty.

Because appellant has failed to submit medical evidence establishing that she sustained a back injury while in the performance of duty on March 10, 1997 the Board finds that she has failed to satisfy her burden of proof.¹²

⁸ 5 U.S.C. § 8101(2); *see also Joseph N. Fassi*, 42 ECAB 677 (1991).

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ 5 U.S.C. § 8101(2); *see also* 20 C.F.R. § 10.400(a); *Robert J. McLennan*, 41 ECAB 599 (1990); *Robert F. Hamilton*, 41 ECAB 431 (1990).

¹¹ *Loras C. Dignann*, 34 ECAB 1049 (1983).

¹² On appeal, appellant has submitted additional evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; *see* 20 C.F.R. § 501.2(c)(1).

The August 22 and July 7, 1997 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, D.C.
November 15, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member