U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VELETTA M. THOMAS and U.S. POSTAL SERVICE,
POST OFFICE, Hazelwood, MO

Docket No. 00-929; Submitted on the Record;
Issued April 17, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on March 9, 1999, as alleged; and (2) whether appellant sustained a recurrence of disability in April 1999 causally related to her alleged March 9, 1999 employment injury.

On March 20, 1999 appellant, then a 30-year-old small parcel bundle sorter clerk, filed a traumatic injury claim (Form CA-1) alleging that on March 9, 1999 she twisted the left side of her back and upper left shoulder when she lifted and tossed a sack. On the reverse side of the claim form, her supervisor noted that appellant first received medical care on March 21, 1999 from DePaul Health Center. Appellant did not stop work.

To support her claim, appellant submitted treatment notes from DePaul Health Center dated March 21, 1999 containing diagnoses of thoracic and acute dorsal myofascial strains. In an x-ray report dated March 21, 1999, Dr. Andre S. Strzembosz, a Board-certified diagnostic radiologist, noted no radiologic evidence of active cardiac/pulmonary disease.

On July 30, 1999 appellant filed a recurrence of disability claim (CA-2a) alleging that in April 1999 she experienced muscle spasms and burning sensations in her upper and middle back causally related to her alleged March 9, 1999 employment injury. She further alleged that she sustained muscle tightening especially in cold or rainy weather. Appellant stated that her symptoms were ongoing and were the same as those she experienced when her alleged March 9, 1999 employment injury occurred. She noted that after returning to work following her alleged injury, she was placed on light duty for three weeks and was restricted from lifting and repetitive left-side motions. On the reverse side of the claim form, appellant's supervisor noted that appellant resigned on May 17, 1999.

By letter dated October 15, 1999, the Office of Workers' Compensation Programs advised appellant that it received her recurrence claim but that additional evidence was necessary

to support her original traumatic injury claim. The Office allowed appellant 30 days to respond to its request for additional information.

Appellant submitted an attending physician's report and attachment dated September 30, 1999 in which Dr. Harold Holmes, a chiropractor, diagnosed thoracic sprain/strain and noted appellant's symptoms. Dr. Holmes indicated by check mark that he believed appellant's condition was caused or aggravated by an employment activity and he noted that he treated her from July 29 to September 30, 1999. He advised that appellant could return to light-duty work on September 30, 1999 with restrictions.

Appellant also submitted a November 3, 1999 report from Dr. Holmes providing a history of her alleged March 9, 1999 employment injury, symptoms and treatment. He stated:

> "As [appellant] denied any problems prior to the [employment] incident and her description of what she was doing when she states the problem started points to the probability that throwing the bag or bags did cause the injury she now complains of."

Appellant further submitted responses to questions posed by the Office dated November 9, 1999 in which she described her alleged March 9, 1999 employment injury, her symptoms and medical treatment.

By decision dated December 6, 1999, the Office denied appellant's traumatic injury and recurrence of disability claims on the grounds that the evidence submitted was insufficient to establish her claims. The Office found that the evidence of record did not establish that appellant experienced the alleged March 9, 1999 employment incident at the time, place and in the manner alleged. The Office also found that the evidence did not support that appellant sustained a medical condition resulting from the alleged work incident. The Office further found that as the evidence of record failed to establish that appellant experienced the claimed event, her recurrence claim could not be accepted.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on March 9, 1999, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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.[2] Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

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. 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.[4] 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.[5]

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged, or whether the alleged injury was in the performance of duty.[6] Nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action.[7] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established his or her claim.[8] An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9]

The Board finds that, the March 9, 1999 employment incident occurred at the time, place and in the manner alleged as appellant's claim is consistent with the facts of the case and her subsequent course of action. There are no discrepancies, inconsistencies or contradictions in the evidence, which create serious doubt that the incident occurred as alleged on March 9, 1999. Although appellant did not seek medical treatment until March 21, 1999, that delay does not create serious doubt that the employment incident occurred at the time, place and in the manner alleged. Dr. Holmes's September 30, 1999 report is consistent with appellant's claim as it noted that she was injured when "[she] was throwing a mail sack into dispatch BMC container."

The second component of fact of injury is whether appellant submitted medical evidence to establish that the employment incident caused a personal injury. Causal relationship is a medical issue and generally must be shown by rationalized medical evidence.[10] Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition

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[4] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[5] *Id.*

[6] *See Elaine Pendelton*, *supra* note 2.

[7] *See Shirley A. Temple, supra* note 4 at 407; *Joseph H. Surgener* 42 ECAB 541, 547 (1991).

[8] *See Shirley A. Temple, supra* note 4 at 407; *Constance G. Patterson*, ECAB 206 (1989).

[9] *Margarita Bell*, 48 ECAB 172, 176 (1996).

[10] *Mary J. Briggs*, 37 ECAB 578 (1986).

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 reasonable 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.[11]

In assessing the probative value of chiropractic evidence, the initial question is whether the chiropractor is a physician under 5 U.S.C. § 8101(2). The 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 as demonstrated by an x-ray to exist[12] or physical therapy under the direction of a qualified physician.[13] The Office's regulations have defined subluxation as "an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae anatomically which must be demonstratable on any x-ray film to individuals trained in the reading of x-rays."[14] The Office's regulations further state that a chiropractor may interpret his or her x-rays to the same extent as any other physician.[15]

In this case, the relevant medical evidence of record includes September 30 and November 3, 1999 reports from Dr. Holmes, appellant's treating chiropractor. In his September 30, 1999 report, Dr. Holmes diagnosed thoracic sprain/strain. As Dr. Holmes did not diagnose subluxation as demonstrated by an x-ray to exist he is not a "physician" within the meaning of the Act and, therefore, his opinion regarding the diagnosis and cause of appellant's condition has no probative value. The remaining medical evidence of record, consisting of March 21, 1999 treatment notes from DePaul Health Center and a March 21, 1999 x-ray report from Dr. Strzembosz, do not contain a rationalized medical opinion relating appellant's alleged condition to the March 9, 1999 employment incident.

The Board further finds that appellant did not sustain a recurrence of disability in April 1999 causally related to her alleged March 9, 1999 employment injury.

Where appellant claims a recurrence of disability due to an accepted employment-related injury, the employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.[16] Such proof must include medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.[17] An award of

[11] *Gary L. Fowler*, 45 ECAB 365 (1994).

[12] 20 C.F.R. § 10.311(a)-(c).

[13] 20 C.F.R. § 10.311(d).

[14] 20 C.F.R. § 10.6(bb).

[15] 20 C.F.R. § 10.311(c).

[16] *Jose Hernandez*, 47 ECAB 288, 293-94 (1996).

[17] *Alfredo Rodriguez*, 47 ECAB 437, 441 (1996).

compensation may not be made on the basis of surmise, conjecture or speculation, or on appellant's unsupported belief of causal relation.[18]

As the medical evidence of record is insufficient to establish that appellant sustained an injury in the performance of duty on March 9, 1999, as alleged, a recurrence of disability causally related to the alleged March 9, 1999 employment incident may not be accepted.

The decision of the Office of Workers' Compensation Programs dated December 6, 1999 is hereby affirmed.

Dated, Washington, DC
April 17, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

[18] *See id.*