

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA M. PETERS and DEPARTMENT OF THE NAVY,
PUGET SOUND NAVAL SHIPYARD, Bremerton, WA

*Docket No. 00-727; Submitted on the Record;
Issued June 15, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained back and neck injuries in the performance of duty August 25, 1999, causally related to factors of her federal employment.

On August 30, 1999 appellant, then a 50-year-old physical science technician, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay compensation, alleging that she strained her back on August 25, 1999 when she was bending over to log onto a computer. Appellant stopped work on August 25, 1999 and returned on September 9, 1999. Accompanying her claim appellant submitted emergency room records dated August 25, 1999, a medical report dated August 27, 1999 from Dr. Christopher C. Kain, a Board-certified orthopedic surgeon, progress notes from Dr. Kain from September 2 to October 5, 1999; an employing establishment clinic note of September 9, 1999 and a return to work note indicating appellant could return to work on September 9, 1999. The emergency room report indicated that appellant injured her back while bending over at work and noted a possible lumbar spine injury. The medical report dated August 27, 1999, prepared by Dr. Kain, noted that appellant was being treated for acute low back sprain secondary to an employment-related injury. He noted that appellant had back pain on and off for some time. Dr. Kain also submitted progress notes dated August 25 to October 5, 1999, which indicated that appellant was being evaluated for back pain and was going to undergo a magnetic resonance imaging (MRI) scan. The employing establishment clinic note indicated that appellant sustained a lumbar strain which was resolving.

By letter dated October 12, 1999, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant stating that the initial information submitted was insufficient to establish an injury as alleged. The Office indicated that appellant's treating physician, Dr. Kain, noted that appellant was experiencing back pain on and off for some time. The Office specifically requested a description of previous injuries of the lumbar spine as well as a description of appellant's symptoms relating to her prior back pain. The Office requested that appellant explain what activity she was performing when the alleged

incident occurred. The Office requested that appellant provide the information within 30 days. The Office also indicated that it had authorized an MRI.

Appellant submitted two MRI reports dated September 27 and October 20, 1999, which indicated an L4-5 mild central canal narrowing due to disc bulge or broad-based protrusion and bilateral degenerative facet changes with facet ligamentous hypertrophy.

In a decision dated November 22, 1999, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on August 25, 1999 as required by the Federal Employees' Compensation Act.¹ The Office found that the factual and medical evidence was insufficient to establish that the appellant experienced the claimed injury as alleged.

The Board finds that appellant has failed to establish that she sustained an injury on August 25, 1999 in the performance of duty, causally related to factors of her federal employment.

An employee seeking benefits under the Act 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 filed within the applicable time limitation 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 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 some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

action.⁶ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁷

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.⁸

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 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁹

In this case, the Office apparently has not accepted that the bending incident occurred as alleged on August 25, 1999. However, there is no evidence disputing that appellant was bending over to log on to her computer on August 25, 1999. All contemporaneous evidence supports that this incident occurred as alleged. Consequently, the Board finds that the bending incident occurred as alleged.

However, the medical evidence is insufficient to establish that this activity caused or aggravated a medical condition. The only medical report supporting a causal relationship between appellant's employment and his diagnosed condition is Dr. Kain's report dated August 27, 1997, which indicated a history of appellant's injury and noted an acute low back pain/sprain secondary to an employment injury. He also noted appellant had been experiencing back pain on and off for some time prior to the injury. Without any further explanation or rationale for the conclusion reached, such report is insufficient to establish a causal relationship.¹⁰ For example, Dr. Kain did not explain how the act of bending would cause or aggravate appellant's condition. Nor did he explain how appellant's preexisting back condition may have affected her condition. Therefore, this report is insufficient to meet appellant's burden of proof. The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition.

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255-56.

⁸ See *Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *James Mack*, 43 ECAB 321 (1991).

¹⁰ *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

In her appeal, appellant indicated that she responded to the Office's October 12, 1999 questionnaire on October 14, 1999 and stated that she sent the documents by regular mail. Appellant submitted a copy of her October 14, 1999 response with her appeal. However, the response was not received by the Office before issuance of the November 22, 1999 Office decision. It is well established that the Board cannot consider new evidence submitted on appeal.¹¹ Therefore, the medical evidence of file is insufficient to establish that appellant experienced the claimed injury on August 25, 1999. For these reasons, appellant has not met her burden of proof.

The November 22, 1999 decision of the Office of Workers' Compensation Programs dated is affirmed as modified.

Dated, Washington, DC
June 15, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹¹ 20 C.F.R. § 501.2(c).