U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ANGELA M. DAVIS and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, San Diego, CA

*Docket No. 02-1407; Submitted on the Record;*
*Issued January 15, 2003*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On May 31, 2001 appellant, then a 39-year-old food service worker, filed a traumatic injury claim alleging that on that May 24, 2001 she strained her back and legs delivering 5 to 10 small and large food tray carts and performing late tray pick up.

By decision dated August 9, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence submitted was insufficient to establish fact of injury. The Office found that the evidence of record was sufficient to establish that the claimed incidents occurred on May 24, 2001, as alleged, but that the evidence was insufficient to establish that an injury resulted therefrom.

By letter dated August 20, 2001, appellant requested a review of the written record. In a decision dated January 29, 2002, an Office hearing representative affirmed the prior denial.

The Board finds that appellant has not established that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim, including the fact 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]

---

[1] 5 U.S.C. §§ 8101-8193.

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

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 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.

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only my 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.[3]

In the instant case, the Office found 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 had not been supported by the medical evidence of file.

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence.[4] 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,[5] must be one of reasonable medical certainty,[6] 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.[7] The mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused by or aggravated by employment conditions is sufficient to establish causal relation.[8]

In the present case, a progress note from the employee health unit dated May 31, 2001, completed by a health worker whose signature is illegible, indicated that appellant presented complaining that she had strained her low back pushing heavy food tray carts on May 24, 2001. Appellant reported that, due to a staff shortage, she was required to perform her duties that day without assistance. Appellant further related that that evening she had difficulty sleeping due to

[3] *Id*.

[4] The Board has held that in certain cases where the causal connection is so obvious, expert medical testimony may be dispensed with to establish a claim; *see Naomi A. Lilly*, 10 ECAB 560, 572-73 (1959). The instant case, however, is not a case of obvious causal connection.

[5] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[6] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[7] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[8] *Manuel Garcia*, 37 ECAB 767, 773 (1986); *Juanita C. Rogers*, 34 ECAB 544, 546 (1983).

spasms and pain in her neck, shoulders and thoracic spine and further felt light headed. Appellant was scheduled to be off work May 25 and 26, 2001 and then called in sick from May 27 to 29, 2001. She reported that on May 30, 2001 she sought medical assistance as was seen by a nurse practitioner who gave her a disability slip and advised her to follow up with a physician. However, this progress note does not contain any discussion of the cause of appellant's various conditions, other than documenting the history of injury as reported by appellant. The record also contains reports and disability slips from Mick Leone, appellant's treating chiropractor. In a report dated June 18, 2001, Mr. Leone stated that appellant was under his care for a recent work-related mishap. He stated that appellant had increased symptomatic problems when in any position for an extended length of time, including sitting, standing, lifting, bending, stooping and twisting and recommended that she abstain from these activities for at least two weeks. In a follow-up report dated July 25, 2001, Mr. Leone listed his diagnoses as: cervical sprain/strain with associated muscle spasms and associated segmental dysfunction; thoracic strain/sprains with associated muscle spasms; left shoulder complex sprain/strain with associated muscle spasms and associated reduced mobility due to range of motion dysfunction; headaches; and muscle spasms and trigger points throughout the entire neck to the lower back region. He stated that appellant's symptomatic problems required a combination of chiropractic manipulation supplemented by physical therapy and recommended that appellant refrain from her typical work for at least 30 days in order to avoid exacerbating her condition.

Under section 8101(2) of the Act, however, chiropractors are only considered physicians and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. As Mr. Leone did not diagnose a lumbar subluxation as shown by x-rays to exist, he is not considered a physician under the Act, and his reports are of no probative medical value.[9] Finally, the record contains a report dated September 5, 2001 from chiropractor Kenneth Stern. Mr. Stern noted that appellant's complaints of back and neck pain, listed his objective findings of a positive Kemp's test (B), decreased and painful lumbar range of motion and T12 subluxation as seen on x-ray. Mr. Stern diagnosed "Thoracic Seg Dysfunction," prescribed two weeks of chiropractic treatment and advised appellant to remain off work. He noted that appellant had a spinal subluxation as demonstrated by x-ray to exist, his report is that of a "physician" as defined under the Act and constitutes competent medical evidence.[10] However, as Mr. Stern's report contains no history of injury and does not address the cause of appellant's diagnosed conditions, his report is of little probative value.[11]

By letter dated July 5, 2001, the Office informed appellant of the necessity of submitting rationalized medical evidence to substantiate that she sustained a traumatic injury due to factors of her federal employment. Appellant failed to submit any medical evidence which discusses

[9] 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). A chiropractor cannot be considered a physician under the Act unless it is established that there is a subluxation as demonstrated by x-ray to exist. *Thomas R. Horsfall*, 48 ECAB 180 (1996).

[10] *Lauramae Heard*, 42 ECAB 688 (1991).

[11] *James Mack*, 43 ECAB 321 (1991).

how specific factors of her federal employment caused or contributed to her condition or provides sufficient rationale for the conclusions therein, the Office properly denied her claim.[12]

The decisions of the Office of Workers' Compensation Programs dated January 29, 2002 and August 9, 2001 are affirmed.[13]

Dated, Washington, DC
January 15, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[12] *Carolyn F. Allen*, 47 ECAB 240 (1995) (medical reports not containing rationale on causal relationship are entitled to little probative value.)

[13] Appellant filed her appeal with the Board on May 13, 2002. On August 1, 2002 the Office issued a decision denying appellant's request for review of the January 29, 2002 decision. As the Board had jurisdiction of this case on August 1, 2002, the Office's decision is null and void under the principles discussed in *Douglas E. Billings*, 41 ECAB 880 (1990).