

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY LYNN HILOVSKY and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Richmond, Va.

*Docket No. 96-1529; Submitted on the Record;
Issued April 14, 1998*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an injury to her lower back in the performance of duty.

On March 17, 1995 appellant, a 23-year-old management assistant, filed a Form CA-1 claim based on traumatic injury, alleging that on July 15, 1994 she was packing and unpacking boxes and moving boxed equipment from one office to another when she began to experience pain in her lower back and in her hips and legs. Appellant sought benefits for continuation of pay.

By letter dated June 5, 1995, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of her claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office further requested that appellant submit a detailed description of how her employment injury occurred. The Office stated that appellant had 30 days in which to submit the requested information.

In response to the Office's June 5, 1995 letter, appellant submitted medical records from four physicians she consulted for her lower back condition, plus physical therapy notes for treatment she received from November 8, 1994 through June 14, 1995.

By decision dated August 4, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained the claimed injury in the performance of duty. The Office found that while the evidence of record supported the fact that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, the medical condition that appellant claimed had resulted from the employment incident of July 15, 1994 was not supported by the medical evidence of record.

In a letter to the Office dated September 15, 1995, appellant requested a review of the Office's August 4, 1995 decision by an Office hearing representative. Accompanying the letter was a September 1, 1995 letter from one of appellant's physicians, Dr. Katherine L. Maurath, Board-certified in physical medicine and rehabilitation, who stated that appellant was under her care from December 23, 1994 to February 6, 1995, and that during that period of time she treated appellant for low back, hip and left leg pain secondary to an injury she sustained while helping her office move on July 15, 1994.

Appellant also submitted written statements from three of her coworkers and her immediate supervisor which essentially indicated that she began to complain of back pain shortly after helping her office relocate on July 15, 1994. Appellant's supervisor stated that she also reinjured her back helping the office renovate and move files, supplies, and equipment on July 15, 1995, and that at that time he directed appellant to cease all activities relative to the move and complete a Form CA-1. He further stated that based on his personal observations, appellant's back problems stemmed from a series of office moves for which she had primary responsibility, and that as a result, he completed Office injury forms as her supervisor.

By decision dated October 23, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty. An Office hearing representative stated that the sole medical evidence appellant submitted with regard to causal relationship was Dr. Maurath's September 1, 1995 letter, which did not constitute sufficient medical evidence to meet appellant's burden that she sustained an injury caused by her employment on July 15, 1994. The hearing representative stated that Dr. Maurath's report did not demonstrate that she was aware of all medical evidence in the case record or that she had knowledge of the specific events of employment lifting and moving resulting in the claimed injury, and that the conditions she cited did not constitute a diagnosis. The hearing representative further stated that Dr. Maurath failed to explain the process through which appellant's claimed back condition was causally related to the work incident of July 15, 1994.

In a letter received by the Office on December 1, 1995,¹ appellant requested reconsideration of the Office's October 23, 1995 decision. Accompanying appellant's letter was a March 15, 1995 report and an October 2, 1995 letter from Dr. M. Theresa Carlini, Board-certified in physical medicine and rehabilitation. In her October 2, 1995 letter, Dr. Carlini stated that appellant first complained of low back pain approximately one and a half years ago, and that she related the onset of her back pain to assisting her office in moving locations, which involved packing and lifting. Dr. Carlini noted that appellant was referred for a lumbar magnetic resonance imaging (MRI) test in December 1994 which was negative. Dr. Carlini opined that appellant's back pain was the result of a work-related injury, and that to her knowledge, she did not have a history of low back pain. Dr. Carlini's March 15, 1995 letter indicated her findings

¹ Appellant's letter requesting reconsideration is not dated, but the Office's January 22, 1996 decision indicates that it was received December 1, 1995 and was therefore timely filed.

on examination regarding appellant's back condition but provided no opinion regarding whether her back condition was causally related to the employment injury of July 15, 1994.²

By decision dated January 26, 1995, the Office denied appellant's claim on the ground that the evidence of record failed to establish that she sustained the claimed injury in the performance of duty. The Office found that the medical evidence appellant submitted was insufficient to establish that appellant had sustained an injury in the performance of duty on July 15, 1994.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury to her lower back in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing that 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.⁴ 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.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "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.⁶ 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.⁷ The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.⁸

² Appellant also submitted physical therapy treatment notes and additional medical records which documented medical conditions unrelated to her claimed back condition.

³ 5 U.S.C. § 8101 *et seq.*

⁴ *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *John J. Carlone*, 41 ECAB 353 (1989)

⁷ *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

⁸ *Id.*

In the present case, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,⁹ and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on July 15, 1994 caused a personal injury and resultant disability.

In the present case, the only medical evidence bearing on causal relationship is the September 1, 1995 letter from Dr. Maurath and the October 2, 1995 letter from Dr. Carlini, both of which merely provided a brief, one-sentence history of the incident and a one-sentence opinion that appellant's claimed lower back condition resulted from the employment incident of July 15, 1994 in which she assisted her office in moving to another location. Neither of these reports provide a probative, rationalized medical opinion sufficient to establish that appellant sustained an injury or disability on July 15, 1994 causally related to employment factors.

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. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.

The September 1 and October 2, 1995 letters from Drs. Maurath and Carlini do not constitute sufficient medical evidence demonstrating a causal connection between appellant's July 15, 1994 employment incident and the claimed injury to her lower back. Causal relationship must be established by rationalized medical opinion evidence. The opinions of Dr. Maurath and Dr. Carlini on causal relationship are of limited probative value in that they did not provide adequate medical rationale in support of their conclusions.¹⁰ They did not sufficiently describe or explain the medical process through which the July 15, 1994 work accident would have been competent to cause the claimed injury. Thus, the Office's decisions are affirmed.

The decisions of the Office of Workers' Compensation Programs dated January 22, 1996 and October 23 and August 4, 1995 are hereby affirmed.

Dated, Washington, D.C.
April 14, 1998

David S. Gerson
Member

Bradley T. Knott

⁹ See *John J. Carlone*, *supra* note 6.

¹⁰ *William C. Thomas*, 45 ECAB 591 (1994).

Alternate Member

A. Peter Kanjorski
Alternate Member