

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VAUGHN R. SMITH and DEPARTMENT OF VETERANS AFFAIRS,
FRESNO VETERANS MEDICAL CENTER, Fresno Calif.

*Docket No. 97-683; Submitted on the Record;
Issued December 14, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

The Board has duly reviewed the case record and finds that appellant has not met her burden of proof in this case.

In the present case, appellant, a clerk, filed an occupational disease claim alleging that on May 8, 1996 or thereafter she was required to perform work which was outside her physical limitations and which caused her to sustain a spasm and pain in the cervicothoracic spine resulting in myofascitis, hypomobility. The record indicates that appellant was involved in a nonwork-related motor vehicle collision on March 18, 1996. Appellant was provided light-work duties upon her return to work following the nonwork-related injury. Appellant alleged that on April 30, 1996 she gave a doctor's note to her lead clerk, Robert Apoduca, which extended her light-duty restrictions until May 1996. Appellant has alleged that on May 8, 1996 Mr. Apoduca told her that she was to work in the "orange area", which appellant explained required work beyond her physical restrictions. Appellant noted that she told Mr. Apoduca "I gave you a doctor's note dated April 28, 1996," which he denied and that he then yelled at her and told her that she would work in the orange area. There are several statements of record from coworkers detailing the interaction between appellant and Mr. Apoduca on May 8, 1996. These statements primarily indicate that an interaction did occur, but that Mr. Apoduca was not abusive towards appellant. The Board notes that appellant has not alleged that she sustained an emotional condition as a result of this interaction and therefore the Office of Workers' Compensation Programs was not required to determine whether this interaction constituted a compensable factor of employment. Rather, appellant has alleged that she did work in the orange area as requested and that she sustained back pain and dizziness as a result thereof.

By decision dated October 7, 1996, the Office denied appellant's claim. In an accompanying memorandum to the Director, the Office noted that while it was accepted that Mr.

Apoduca assigned appellant to work in the “orange area” appellant had not provided the requested statement detailing the nature of duties she was required to perform in the “orange area” and appellant had not provided the medical evidence necessary to establish that she sustained a compensable back injury as a result thereof.

In this case, appellant sustained a nonemployment-related back injury in March 1996 and thereafter claimed that her work activities caused her disability. The Board has previously held that it matters not what the state or condition of the health of the employee might be; if the conditions of employment constitute the precipitating cause of disability such disability is compensable as having resulted from injury arising out of the employment. The aggravation of a preexisting disease or defect is as compensable as an original or new injury.¹

In this case, the Office properly denied appellant’s claim as appellant did not submit the necessary factual evidence clarifying what employment duties caused her disability, and did not submit the necessary medical evidence to establish that her disability after May 8, 1996 was caused by these employment duties. On August 5, 1996 the Office requested that appellant detail the employment-related duties which aggravated her back condition. Appellant was also requested to provide a comprehensive medical report from her physician which discussed with medical rationale the cause of her condition. Section 10.100(b) of the Office’s regulations² provides that an employee who claims compensation for an occupational disease or illness must submit a statement which includes: a detailed history of the illness; complete details of employment conditions believed to be responsible for the illness; a description of specific stressful conditions including locations, frequency and duration; and a description of any similar condition sustained by the employee. Appellant did not respond to this request by the Office to provide the factual or medical evidence necessary to adjudicate the claim.

The Board also finds that the medical evidence of record does not causally relate appellant’s back condition to her employment. On June 7, 1996 a chiropractic physician, Dr. John Arakelian, completed an attending physician’s report wherein he diagnosed repetitive injury to cervical, thoracic and lumbar spine caused by excessive work duties. He did not indicate, however, that he had diagnosed a subluxation of the spine. Section 8101(2) of the Federal Employees’ Compensation Act³ provides that 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 x-ray to exist. As Dr. Arakelian did not indicate that he performed x-rays and diagnosed a subluxation therefore, he is not considered a physician pursuant to the Act and his reports do not constitute probative medical evidence regarding the medical cause of appellant’s condition.⁴ The Office also received several disability notes from Dr. Stephen R. Blair. Dr. Blair indicated, for example, on May 28, 1996 that appellant would be temporarily totally disabled until June 20,

¹ See *Willie J. Clements, Jr.*, 43 ECAB 244 (1992).

² 20 C.F.R. § 10.100(b); see also *Ruthie M. Evans*, 41 ECAB 416 (1990).

³ 5 U.S.C. § 8101(2).

⁴ *Sheila A. Johnson*, 46 ECAB 323 (1994).

1996 due to injuries she sustained on March 18, 1996. Dr. Blair did not opine in any medical report of record that appellant was disabled after May 8, 1996 due to her employment duties. As such, Dr. Blair's reports do not constitute the probative medical evidence necessary to establish that appellant's employment activities after May 8, 1996 caused or contributed to her disability.

An employee seeking benefits under the Act⁵ has the burden of establishing the essential elements of his or her claim, including 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.⁶ Neither the fact that the condition became apparent during a period of employment, nor the belief of appellant that the condition was caused or aggravated by employment conditions is sufficient to establish causal relationship.⁷

As appellant did not submit the necessary factual and medical evidence to establish that her employment aggravated her condition causing disability on or after May 8, 1996, appellant has not met her burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated October 7, 1996 is hereby affirmed.

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

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *See Ruby I. Fish*, 46 ECAB 276 (1994).

⁷ *Id.*