U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANNIE M. SCONTRINO and U.S. POSTAL SERVICE,
POST OFFICE, Coppell, Tex.

Docket No. 96-1925; Submitted on the Record;
Issued July 1, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on October 12, 1995.

On October 26, 1995 appellant, then a 22-year-old clerk filed a notice of traumatic injury and claim for compensation/continuation of pay (Form CA-1) alleging that she injured the lower part of her back in the performance of duty on October 12, 1995, when she and a co-worker was dispatching mail and combining gondolas. Appellant explained that they picked up a small gondola in order to dump the mail from it into a larger gondola, when she felt a pull in her back causing an injury to her lower back. The record shows that appellant lost no time from work, and first sought medical treatment for this alleged injury approximately twenty days later on November 2, 1995. Appellant was prescribed physical therapy and placed on light duty restrictions with no prolonged standing, sitting or lifting more than 10 pounds. In a decision dated April 10, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established. In an accompanying memorandum, the Office noted that the evidence of file failed to establish that appellant sustained an injury as alleged.

The Board has fully reviewed the case record and finds that appellant has not met her burden of proof in establishing that she sustained an injury to her lower back in the performance of duty on October 12, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that the essential elements of his or her claim[2] including the fact that the

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman,* 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] 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.[5] 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.[6]

In order to determine whether a federal employee has sustained a traumatic 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. 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.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged but failed to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[9]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[10] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[11]

In the instant case there is no dispute that the incident occurred at the time, place, and in the manner alleged by appellant. However, an injury resulting from this incident has not been established. Appellant submitted medical reports dated November 2, 27, and December 27,

[3] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

[5] *See Melinda C. Epperly*, 45 ECAB 196 (1993); *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[6] *David J. Overfield*, 42 ECAB 718 (1991); *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[7] *See John J. Carlone*, 41 ECAB 354 (1989).

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

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in the loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[10] *See Elaine Pendleton*, *supra* note 5.

[11] *See John J. Carlone*, *supra* note 7.

1995, from Dr. K. James Wagner, a Board-certified orthopedic surgeon indicating that he first examined appellant on November 2, 1995 because of complaints with her lower back. He reported the history of injury as presented by appellant, noted that she was two months pregnant and diagnosed her with lumbar syndrome. On examination, Dr. Wagner reported that appellant had negative straight leg raising and no motor, sensory or reflex deficit of the lower extremities; that the back showed no spasm, minimal tenderness in the lumbar paravertebral musculature; good range of motion; and no sciatic notch tenderness. He went on to note, that no x-rays were taken and no medication was prescribed because of appellant's pregnancy, but recommended that appellant take physical therapy for her back. He also recommended that appellant perform light duty with no prolonged sitting or standing, and no lifting of more than 10 pounds. In the November 27, 1995 medical report Dr. Wagner noted that appellant had not gone to physical therapy as advised. He again indicated that appellant was in her first trimester of pregnancy and suffering from nausea; that her condition had remained unchanged; that she would be reconnected with the physical therapy; that she would be seen in four weeks; and that she would continue the light duty as previously prescribed. Dr. Wagner further indicated in his December 27, 1995 report, that appellant did not show up for her four week appointment, but noted that things continued as before.

The medical reports submitted by Dr. Wagner are insufficient to establish appellant's claim. Dr. Wagner did not relate appellant's lumbar syndrome to her light duty restrictions of no prolonged standing or sitting, and no lifting of more than 10 pounds. He did not explain why or how the prolonged standing, sitting or lifting of more than 10 pounds caused, contributed and/or aggravated appellant's diagnosed condition of lumbar syndrome. In addition, Dr. Wagner did not address what role, if any, appellant's pregnancy played or impacted on the presence or occurrence of a specific medical condition. He provided no reasoned medical opinion attributing appellant's complaints to an injury sustained at work on October 12, 1995. Dr. Wagner's medical reports, are therefore, of diminished probative value.[12]

Because the record lacks a rationalized medical opinion relating appellant's work activities to her diagnosed lumbar syndrome, the Board finds that appellant has failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on October 12, 1995.

[12] *Charles H. Tomaszewski*, 39 ECAB 461 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of diminished probative value).

The decision of the Office of Workers' Compensation Programs dated April 10, 1996 is affirmed.

Dated, Washington, D.C.
July 1, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member