

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YVONNE MARTINEZ and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, St. Albans, N.Y.

*Docket No. 96-2203; Submitted on the Record;
Issued July 29, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she was injured at work as she alleged.

On November 21, 1995 appellant then a 31-year-old assistant chief, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she felt a tear in her stomach while lifting two five-gallon tubs of salad on November 20, 1995. On the claim form appellant noted that she had surgery performed on September 23, 1995. There is also a witness statement from a Mr. Reynolds.

The record contains an emergency room record dated November 22, 1995 which notes that appellant's chief complaint is abdominal pain after lifting a heavy box yesterday and medical notes diagnosing possible intra-abdominal adhesion by Dr. Christopher J. Beatty, an attending Board-certified surgeon.

In a letter dated December 13, 1995, Dr. Beatty noted that he has been treating appellant for recurrent abdominal pain. Dr. Beatty noted, "her diagnosis and prognosis, at this time, are unknown."

By letter dated January 12, 1996, the Office of Workers' Compensation Programs requested detailed medical evidence from appellant.

In a letter dated January 25, 1996, Dr. Sol M. Usher, appellant's treating Board-certified urologist, stated that appellant "was hospitalized for severe flank pain January 17 through January 21, 1996. This was initially thought to be a renal colic." Dr. Usher then noted that appellant gave a history of injuring her back at work several weeks previously.

In a decision dated February 14, 1996, the Office rejected appellant's claim for compensation on the grounds that fact of injury was not established. In an accompanying memorandum, the Office indicated that there was insufficient and conflicting evidence to

establish that the claimed incident occurred as alleged and also that there was insufficient evidence to establish that a medical condition resulted from the alleged work incident.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Federal Employees' Compensation 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."¹ 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.²

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.³

In this case, the Office found that there was conflicting and insufficient evidence to establish whether the incident giving rise to the claimed injury occurred as alleged. However, the Board notes that there is no evidence disputing that the incident, in which appellant lifting boxes, occurred as alleged. The record indicates that appellant filed a claim within a day of the alleged injury and there is a statement of a witness verifying that the incident occurred as alleged.⁴ Consequently, the Board finds that the claim incident occurred as alleged by appellant.

The second component of fact of injury is whether the employment incident caused a personal injury and generally can only be established by medical evidence. To establish 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.⁵

In this case, there is no rationalized medical opinion evidence supporting a causal relationship between appellant's November 21, 1995 employment incident and the diagnosed

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

⁴ The employing establishment stated that appellant should not have lift the boxes due to her recent surgery. The employing establishment does not state that appellant did not lift the boxes, but that she should have instructed the chef or someone else to perform the lifting. This is not sufficient to dispute that the incident occurred as alleged.

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994); see 20 C.F.R. § 10.110(a).

conditions of abdominal pain and appellant's hospitalization for severe flank pain. The medical evidence submitted by appellant provides a diagnosis and notes the November 21, 1995 injury, but there is no reasoned opinion addressing whether appellant's lifting of boxes at work on November 21, 1995 caused an injury. Neither Dr. Usher nor Dr. Beatty in any of their reports provided any rationale supporting a relationship between the diagnosed conditions and appellant's employment incident on November 21, 1995. Although the Office advised appellant of the type of evidence needed to establish her claim, such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant's burden of proof.

The decision of the Office of Workers' Compensation Programs dated February 14, 1996 is affirmed as modified to reflect that appellant's claim was denied on the grounds that she did not submit sufficient medical evidence to establish that she sustained an injury in the performance of duty on November 21, 1995.

Dated, Washington, D.C.
July 29, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member