U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRENDA E. DE LA CRUZ and U.S. POSTAL SERVICE, POST OFFICE, San Diego, Calif.

Docket No. 96-2220; Submitted on the Record;
Issued July 28, 1998

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing the she sustained an injury to her right hip in the performance of duty on February 28, 1996, as alleged.

On March 1, 1996 appellant, then a 30-year-old mail carrier, filed a claim alleging that she sustained an employment-related injury to her right hip on August 5, 1992.[1] Appellant stated that she first realized that her disease or illness was caused or aggravated by her employment on August 5, 1992; that she first became aware of the disease or illness on February 29, 1996; and explained that the nature of her disease or illness was left hip pain from a previous injury. On the reverse side of this form, appellant indicated that she first received medical care on August 5, 1992; that she first reported her condition to her supervisor on March 1, 1996 and that she was last exposed to conditions alleged to have caused her disease or illness on March 1, 1996. The employing establishment has indicated that its knowledge of the claimed injury was in agreement with the statements made by appellant.

Appellant had also submitted duty status reports (Form CA-17) bearing illegible and unidentifiable signatures of physicians dated August 5, 1992 and March 1, 1996 and several unidentifiable physician's notes dated July 27 and July 28, 1992. In the August 5, 1992 report, the date of injury presented is August 5, 1992 and the diagnosed condition due to this alleged injury was left ankle, foot and hip strain. In the March 1, 1996 report, the date of injury provided was February 29, 1996, the diagnosed condition was "osteoarthritis" with tenderness of hip and pain in movement and the response to the description of how the injury occurred and the parts of the body affected was appellant's "R[right] hip when stepping out of the postal vehicle." However, this report also stated that "I can [not] fill this out until employer fills out other side.

[1] By letter dated April 19, 1996, the Office of Workers' Compensation Programs advised appellant that her notice of occupational disease claim form CA-2 was being changed to a notice of traumatic injury claim form CA-1, since appellant had noted in a letter dated March 26, 1996, that she sustained an injury in the performance of duty on February 28, 1996.

No work until March 8, 1996 or when feeling better. If still sore then will reevaluate. It is stupid to fill this form out so early."

Appellant also submitted three illegible and unidentifiable physician's work restriction notes dated July 24, 28 and August 5, 1992. The July 24, 1992 work restriction noted that appellant was seen on that day and diagnosed with hip injury left side, prescribed Advil medication and advised no work until Monday if patient is better. The July 28, 1992 work restriction noted that appellant was seen on that date, diagnosed her with hip strain and advised her to rest until she resumed work on August 5, 1992. The August 5, 1992 work restriction report indicated a modified work with limitations noted and diagnosed left hip, ankle and foot sprain.

By letters dated March 15 and April 19, 1996, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the causal relationship, if any, between the alleged work injury and the condition(s) for which she was now being treated. Appellant was allotted 30 days within which to submit the requested evidence.

In a letter dated March 26, 1996, appellant responded by stating that she got out of her postal vehicle on her mail route at work and stepped into a pothole on February 28 or 29, 1996, hurting her right hip and not her left. She also indicated that her supervisor informed her that she did not need to fill out a CA-1 form.

By decision dated June 13, 1996, the Office denied appellant's claim for compensation on the grounds that the evidence of record failed to support the fact of an injury in this case. In an accompanying memorandum, the Office found that the claimed events, incidents or exposures occurred at the time, place and in the manner alleged; however, a medical condition resulting from the accepted trauma or exposure was not supported by the medical evidence of file.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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.[3] 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.[4]

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

[2] 5 U.S.C. §§ 8101-8193.

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

[4] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.[5]

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by 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.[6]

In this case, there is no dispute that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, there is no rationalized medical opinion evidence to support that appellant suffered an injury or disability causally related to any work factors. The only medical evidence of record regarding the February 28, 1996 incident, is a duty status report, Form CA-17 dated March 1, 1996. Although this form bore an illegible and unidentifiable physician's name, it presented the date of injury as February 29, 1996, not February 28, 1996 as alleged and diagnosed appellant with "osteoarthritis" with tenderness of hip and pain in movement and the response to the description of how the injury occurred and the parts of the body affected was appellant's "R[right] hip when stepping out of the postal vehicle." This form also stated that "I can [not] fill this out until employer fills out other side. No work until March 8, 1996 or when feeling better. If still sore then will reevaluate. It is stupid to fill this form out so early." Absent a signed and legible signature from a qualified physician, this CA-17 report lacks proper identification and cannot be considered as probative evidence.[7] Furthermore, although a diagnosis of "osteoarthritis was given, appellant provided no rationalized medical opinion attributing her complaints to an injury sustained at work on February 28, 1996. Consequently, the evidence of record is not sufficient to establish that appellant sustained an injury while in the performance of duty on February 28, 1996, as she has not submitted any medical evidence addressing how or why the getting out of her postal vehicle, on her mail route at work and then stepping into a pothole caused or aggravated any particular medical condition or disability.[8]

The Board, however, has held that 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.[9] Causal relationship

[5] *Elaine Pendleton, supra* note 3.

[6] *Kathryn Haggerty*, 45 ECAB 383 (1994), *see also* 20 C.F.R. § 10.110 (a).

[7] A medical report may not be considered as probative medical evidence if there is not indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2); *see also Bradford L. Sutherland*, 33 ECAB 1568 (1982).

[8] *Id.*

[9] *See Id., Victor J. Woodhams, supra* note 4.

must be established by rationalized medical opinion evidence and, therefore, appellant failed to submit such evidence in the present case.[10] The Office, therefore, properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated June 13, 1995 is affirmed.

Dated, Washington, D.C.
July 28, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[10] *See Id. (Woodhams)*