U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUZANNE BETH GRIGGS and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Atlanta, Ga.

Docket No. 96-1566; Submitted on the Record;
Issued May 6, 1998

DECISION and ORDER

Before MICHAEL E. GROOM, 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 February 15, 1995.

On April 17, 1995 appellant, then a 52-year-old budget assistant filed a notice of traumatic injury and claim for continuation of pay/compensation Form CA-1, alleging that the injury to her foot, arm, and lower back was employment related.[1] Appellant stated that she was walking from the parking lot to her place of business (on the sidewalk at the left front corner of her federal building where water drains from the side of the building across the sidewalk) when she slid and fell on thin freezing ice which was on the sidewalk because of a slow and steady rain, and because temperatures were hovering near the freezing point and forming layers of ice on the sidewalk where the water was draining from the side of the building across the side walk. Appellant therefore submits that she injured her right foot and pulled the muscles in her right ankle which began swelling immediately. She explained that "I landed on my right leg with my right foot bent straight back, my knee bent under me, and my left leg straight out in front of me. I was unable to do much about breaking my fall as I was carrying an open umbrella, my lunch, and my pocketbook. My right ankle, foot, and extreme lower back took the brunt of the fall. I landed in a semi-sitting position." Appellant moreover, stated that on the following day, she noticed that she had also bruised her extreme lower back and slightly injured her left wrist during her fall. A witness has filed a statement corroborating appellant's incident of February 15, 1995. The record, however, shows that appellant lost no time following this incident.

[1] Appellant explained that the reasons for her delay in filing this Form CA-1, was because the employing establishment had informed her that the sidewalk where she fell belonged to the city, and the government was not the responsible party. After further research, and as soon as appellant received the Book of City Ordinances from the City of Greensboro which placed liability back on the government who owns the building in which appellant is employed, her claim was filed.

In a memorandum attached to her Form CA-1, appellant stated that "on the morning of Wednesday, March 15, 1995, (approximately one month later) I bent over to tie a trash bag at home and felt a shooting pain go through my lower back and was unable to straighten up. I had never before this time experienced any back problems." Appellant has therefore submitted a medical slip from Dr. Kamal M. Kapur, dated March 22, 1995 advising rest for one week. The record shows that appellant lost a total of 88 hours of work due to the March 15, 1995, incident, from March 15 until March 30, 1995 when she returned to full-duty status. The employing establishment has controverted appellant's claim for benefits.

In a May 22, 1995 letter, the Office of Workers' Compensation Programs 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 has now been treated. Appellant was allotted 30 days within which to submit the requested evidence.

Appellant did not respond to the Office's May 22, 1995 letter, or submit evidence to support her claim.

By decision dated July 15, 1995, 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 noted that appellant was advised of the deficiency in her claim on May 22, 1995, and afforded an opportunity to provide supportive evidence, however, no medical evidence of any kind was submitted to support the fact that appellant sustained an injury on February 15, 1995, as alleged.

In a letter dated November 20, 1995, appellant requested reconsideration of the Office's July 15, 1995 decision and submitted a Form CA-16, an authorization for examination and/or treatment dated October 27, 1995 accompanied by progress notes dated March 22 and October 27, 1995 from Dr. Kapur.

In the progress note dated March 22, 1995, Dr. Kapur presented the history of appellant's condition as given to him by appellant and reported "examination: Loss of lumbar lordosis present. SLRs [straight leg raising] are negative." The handwritten progress note dated October 27, 1995 is illegible. The Form CA-16 from Dr. Kapur noted that he first saw appellant on March 22, 1995, diagnosed her with low back pain, prescribed Advil for pain, Flexoril for a muscle relaxant, and supported causal relationship by checking a "yes" box indicating that appellant's condition was work related.

In a decision dated March 19, 1996, the Office denied modification of its prior decision and finding that the evidence of file failed to establish that an injury was sustained as alleged. In an accompanying memorandum, the Office noted that the medical evidence submitted on reconsideration failed to establish a causal relationship between the injury and the claimed condition. The Office stated that the history of injury reported by Dr. Kapur on March 22, 1995 was that "about three weeks ago she had fallen down and hurt her gluteal area, (buttocks area)" was not consistent with the injury reported as having occurred on February 15, 1995 by

appellant. The Office also noted that the diagnosis of "low back ache" was a subjective complaint and not a diagnosis.

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 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, the Office found 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. Although the CA-16 form dated October 27, 1995, and attached progress notes dated March 22 and October 27, 1995, diagnosed appellant with low back ache, with loss of lumbar lordosis present, it did not present a rationalized medical opinion addressing whether this condition or any other medical condition arose out of the incident of February 15, 1995. Dr. Kapur's opinion on causal relationship consisted only of checking "yes" to the form's question of whether appellant's condition was related to the history as given, without any explanation or rationale, has little probative value and is insufficient to establish causal relationship.[7] Consequently, the evidence of record is not sufficient to establish that appellant

[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).

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

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

[7] *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal

sustained an injury while in the performance of duty on February 15, 1995 as she has not submitted any medical evidence addressing why or how the falling on freezing ice, on the sidewalk of her federal building, while on her way to work would cause or aggravate 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 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 decisions of the Office of Workers' Compensation Programs dated March 19, 1996 and July 15, 1995 are affirmed.

Dated, Washington, D.C.
May 6, 1998

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

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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 little probative value).

[8] *Id.*

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

[10] *See Id. (Woodhams)*