U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY L. FREITAG and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, Mo.

Docket No. 96-1893; Submitted on the Record;
Issued September 10, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an injury or medical condition, causally related to a February 3, 1995 employment incident.

On March 16, 1995 appellant, then a 52-year-old automated mark-up clerk, filed a claim alleging that on February 3, 1995 she injured her left hand as she tried to open the back door of her jeep. Appellant identified the nature of the injury as "left hand weakened," and described its occurrence as "tried to open back door of jeep -- pain hit left hand -- ran up my arm -- tried to drive -- hand and arm kept hurting -- went to doctor to check it out." Appellant claimed that she had to go to physical therapy for four weeks to strengthen her left hand and arm.

In support of her claim, appellant submitted a February 10, 1995 physical therapy referral from Dr. David G. Paff, appellant's treating Board-certified occupational medicine specialist, which noted appellant's diagnosis as "PO CTS [postoperative carpal tunnel syndrome] & recent Hand inj[ury]."[1] Nothing further was noted. In a report to her employer the same date Dr. Paff noted a diagnosis of "bilateral carpal tunnel syndrome," indicated treatment as "physical therapy," and recommended that appellant could work with limitations if modified work was available. Also submitted were physical therapy progress notes and reports.

On December 15, 1995 the Office advised appellant that further information was needed including a medical report from her attending physician.

On January 3, 1996 Dr. Paff completed a Form CA-20 attending physician's report noting date of injury as February 3, 1995, noting the history of injury as "repetitive use of hands at work," noting his findings as "hand pain and weakness, shoulder pain," and indicating a diagnosis of status post bilateral carpal tunnel syndrome. Dr. Paff checked "yes" indicating that

[1] Appellant had been treating with Dr. Paff since October 1992 and had undergone bilateral carpal tunnel releases in March 1993. The Office of Workers' Compensation Programs had accepted that appellant developed employment-related bilateral carpal tunnel syndrome in February 1993.

he believed the condition found was caused by an employment activity, and noted "repetitive use of hands."

Also submitted to the Office were other reports from Dr. Paff addressing a permanent impairment rating for appellant's accepted condition of bilateral carpal tunnel syndrome, but not mentioning the February 3, 1995 employment incident. Additionally submitted were Dr. Paff's reports addressing work limitations due to appellant's bilateral carpal tunnel syndrome, but also not mentioning the February 3, 1995 employment incident. Further submissions included reports from other physicians addressing appellant's bilateral carpal tunnel syndrome but not discussing the February 3, 1995 employment incident or an injury or condition as a result thereof.

By decision dated March 25, 1996, the Office rejected appellant's claim finding that the evidence of record failed to establish that she sustained an injury or condition, causally related to the February 3, 1995 employment incident. The Office found that the medical evidence submitted was insufficient to establish appellant's claim.

The Board finds that appellant has failed to establish that she sustained an injury or medical condition, causally related to a February 3, 1995 employment incident.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 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 essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.[5] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[6]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

[5] *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

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

In this case, the Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, appellant has submitted insufficient medical evidence to establish that the employment incident caused a personal injury.

In the instant case, appellant submitted a physical therapy referral and a report to her employer, both from Dr. Paff, neither of which specifically mention the February 3, 1995 incident or identify a discreet injury or condition resulting therefrom. Both documents, however, identify as a diagnosis a condition previously accepted by the Office, which is not the subject of this claim. Consequently, neither of these documents support appellant's February 3, 1995 traumatic injury claim.

Appellant also submitted multiple physical therapy reports. As these reports are not provided by a physician as defined under the Act they are not considered to be medical evidence.[7]

Finally, in response to the Office's request for further medical evidence, appellant submitted a Form CA-20 attending physician's report from Dr. Paff which contained only the diagnosis of a previously accepted employment condition, status post bilateral carpal tunnel syndrome, and which indicated an incorrect history of injury for the date of injury claimed, namely that of "repetitive use of hands at work," when appellant had alleged that she injured only her left hand when trying to open a jeep back door. The Board notes that this CA-20 apparently only addresses appellant's previously accepted employment-related condition, insofar as diagnosis, history of injury, and causation goes, and merely notes February 3, 1995 as the date of injury, but omits an accurate history of the injury claimed for that date. As this report is internally inconsistent, noting a discreet date of injury but a repetitive use history of injury, it is of diminished probative value. Moreover, as the report apparently addresses only appellant's previously accepted condition of bilateral carpal tunnel syndrome, and offers no diagnosis for a left hand injury or condition occurring due to trying to open a jeep door on February 3, 1995, it is not relevant to the issue of the claim, and hence is of even further diminished probative value, making it wholly insufficient to establish appellant's claim.

As nothing further was submitted by appellant to establish that she sustained a left hand injury or condition related to the February 3, 1995 employment incident, she has failed to meet her burden of proof to establish her claim.

[7] The Board notes that therapists are not "physicians" as defined by 5 U.S.C. § 8101(2), and that their reports, therefore, do not constitute competent medical evidence to support appellant's claim. *Theresa K. McKenna*, 30 ECAB 702 (1979); *see Barbara J. Williams*, 40 ECAB 649 (1988) (physical therapist not a "physician").

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 25, 1996 is hereby affirmed.

Dated, Washington, D.C.
September 10, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member