U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESLIE K. O'BRIEN and DEPARTMENT OF VETERANS AFFAIRS, ALVIN C. YORK MEDICAL CENTER, Murfreesboro, Tenn.

Docket No. 97-2006; Submitted on the Record;
Issued April 26, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained injuries to her neck, left arm, left knee, shoulders and chest in the performance of duty on January 19, 1996.

On January 19, 1996 appellant, then a 45-year-old nursing assistant, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that she sustained employment-related injuries to her neck, left arm, left knee, shoulders and chest. Appellant states that on January 19, 1996 two patients started fighting in the day room of her employing establishment, when she attempted to break up the fight by grabbing one patient, but both of the patients fell on top of her causing her to have a headache, a twisted neck, sore shoulders and a sore left side with left chest pains, left arm and left knee were bent. The record shows that appellant stopped work on January 20, 1996 and returned to work on February 9, 1996.[1] On the reverse side of the form, the employing establishment controverted appellant's claim for benefits because:

> "[Continuation of pay] from January 20 through January 25, 1996 pending receipt of med[ical] to support disa[bility]. January 19, 1996 med[ical] states full duty; med[ical] rec[eived] January 26[, 1996] has no date to reflect [the] beginning date of total disa[bility]. [Appellant] had prior injury January 12, 1996 -- same

[1] The record shows a previous injury to appellant's neck on January 13, 1996. However, the record, in this case, does not show where appellant filed a claim regarding the January 13, 1996 incident. Therefore, the Board will not address appellant's alleged prior incident of January 13, 1996.

area when hit in neck by a patient. [Continuation of pay] auth[orized] for January 26 through February 8, 1996; [and] additional intermittent absence…."[2]

In a decision dated April 30, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to demonstrate that appellant sustained an injury as alleged, and that fact of injury had not been established. In an accompanying memorandum, the Office found that the only reports from a physician in file are disability slips with no history of injury or reasoned medical opinion on the causal relationship of the diagnosed condition or disability. The Office further presented appellant with an opportunity to convert her authorized continuation of pay to sick or annual leave, without having the employing establishment declare the salary received an overpayment, subject to recovery under 5 U.S.C. § 5584.

By letter dated May 15, 1996, appellant requested reconsideration of the Office's April 30, 1996 decision and submitted additional medical evidence. This evidence included progress notes from an unspecified physician dated January 26, February 9, March 12 and April 5, 1996, and which the Office considered progress notes from Dr. Dennis O. Bradburn, a Board-certified neurologist, since they were from the Department of Neurology Murfreesboro Medical Clinic; medical reports and/or progress notes from Dr. Melvin D. Law, Jr., specializing in orthopedic surgery, of the spine dated July 15 and August 19, 1996; and a May 16, 1996 one paragraph medical report from a Dr. Robert L. Lewis.

In a March 20, 1997 merit decision on reconsideration, the Office denied appellant's application for review of the Office's April 30, 1996 decision for the reason that the evidence submitted in support of the request for reconsideration was insufficient to warrant modification of the prior decision.

The Board finds that appellant has not met her burden of proof in establishing that she sustained injuries to her neck, left arm, left knee, shoulders and chest in the performance of duty on January 19, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 or specific condition, for which compensation is claimed are causally related to the employment injury.[4] These are the essential

[2] The employing establishment also submitted a report of termination of disability and/or payment (Form CA-3) dated April 24, 1996, and noting that appellant's regular pay continued January 27 through February 9, 1996, during the period of disability.

[3] 5 U.S.C. § 8101 *et seq.*

[4] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[5]

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that she or he actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.[6] The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[7] The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.[8]

In determining whether an employee sustained an injury in the performance of her or his duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components considered in conjunction with one another.[9] The first component to be established is that the employee actually experienced the employment incident at the time, place and in the manner alleged. In this case, the Office found that the claimed incident occurred at the time, place and in the manner alleged. The second component, whether the employment incident caused a personal injury, generally must be established by medical evidence.[10]

The medical evidence required is generally rationalized medical opinion evidence, which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11] Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that her or his condition was caused by their employment is sufficient to establish a causal relationship.[12]

There is no dispute that appellant has a mild cervical spondylosis, possible myelopathy, lumbar spine spondylosis and that she may also have fibromyalgia. However, there is insufficient rationalized medical opinion evidence to support the fact that appellant suffered her

[5] *Id.*

[6] *Gene A. McCracken*, 46 ECAB 593, 586 (1995).

[7] 20 C.F.R. § 10.5(15).

[8] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2(a) (June 1995); *see also Elaine Pendleton, supra* note 4.

[10] *John J. Carlone*, 41 ECAB 354, 357 (1989).

[11] *Ern Reynolds*, 45 ECAB 690, 695 (1994).

[12] *Lourdes Harris*, 45 ECAB 545, 547 (1994).

injuries or disabilities causally related to any factors of her federal employment. Appellant submitted progress notes and medical reports from Dr. Bradburn, Dr. Law, Jr., and Dr. Lewis.

In the progress notes of Dr. Bradburn and Dr. Law, Jr., the physicians noted that appellant had a continuing history of neck and headache pain/strain as well as other complaints following the January 19, 1996 incident. In the January 26, February 9, March 12 and April 5, 1996 progress notes, Dr. Bradburn diagnosed appellant with neck sprain with post-traumatic headache, neck sprain, and tension-type headache. Dr. Bradburn reports the history of appellant's injuries as "[Appellant] is 45 years of age and has had headaches since an injury on January 13, 1996. The pain is primarily in the neck but she has also developed some pain on the right side over to the front behind the eye. She describes it as a pressure-type sensation. It has been relatively constant since the onset with little in the way of fluctuation. She has taken some analgesics which have helped slightly." Dr. Bradburn noted that appellant had good range of motion of the neck, but did have muscle spasms in the neck which was primarily on the right. Appellant has continuously complained about neck and headache pain.

In a July 15, 1996 medical report, Dr. Law, Jr. stated:

> "Physical Examination/Cervical Spine: There is decreased range of motion of the cervical spine and causes pain into the right shoulder. She has pain on the right side on right lateral bending of the neck. There is limited range of motion. She has bending of the neck. There is limited range of motion. She has slight difficulty with tandem gait. Extension test causes pain in the trapezius on the right side, negative L'Hermittes. Motor function reveals 4/5 right biceps, remainder of motors are 5/5. Sensation intact of the upper and lower extremities. Lower extremity motors are intact. Reflexes reveal brisk upper extremity and lower extremity reflexes. She has positive Hoffman's on the right, trace Hoffman's on the left side. There are two beats of left foot ankle clonus. Shoulders have full range of motion. Negative Tinel's and Phalen's, no Waddell signs.
>
> "Physical Examination/Lumbar Spine: Reveals minimal tenderness on lumbar palpation. There is pulling of the hamstrings on the right side. Straight leg raising is negative on the left.
>
> "X-rays: Reveal disc space narrowing at C5-6 with mild osteophytes. There is calcification of the ALL at the C6-7. Lumbar x-rays reveal right-sided lumbar scoliosis. There is some mild degenerative disc disease.
>
> "Impression: Mild cervical spondylosis, possible myelopathy. Lumbar spine spondylosis. She may also have a fibromyalgia and have recommended Elavil 10 mg [milligrams] hs [hours], Ultram and Robaxin and Daypro.
>
> "Recommendation: Recommend an MRI [magnetic resonance imaging] scan of the cervical spine."

In an August 19, 1996 report, Dr. Law stated:

> "[Appellant's] neck is better with physical therapy. She still gets some tightness in the neck; however, still has some pain that radiates into the right rhomboid region, but she is making a small amount of progress.
>
> "Her low back is actually getting worse and she has pain into her right posterolateral thigh and posterior thigh in the hamstrings region. There is mild tenderness on palpation of this region. There is positive straight leg raise for pain in the region on the right side, negative Patrick's, negative piriformis stretch test."

The record contains a January 13, 1996 progress note and radiology report from Dr. Gadson J. Tarleton, a radiologist, which predates the January 19, 1996 incident.[13] However, in several other radiology reports dated January 19 and 25, 1996, Dr. Tarleton revealed in regards to appellant's alleged injuries to her neck, left arm, left knee, shoulders and chest:

> "Left knee in frontal and lateral projections shows no evidence of fracture or dislocation. A small spur projects from the medial margin of the tibial plateau and from the posterior aspect of the interior pole of the patella. No sign of joint effusion is observed.
>
> "Impression: minor degenerative change, left knee. Otherwise negative left knee.
>
> "The right shoulder in frontal projection with the arm in internal and in external rotation shows no sign of fracture or dislocation or of other pathology.
>
> "Impression: negative right shoulder.
>
> "The left elbow in frontal and lateral projections shows no evidence of fracture or dislocation. Very minor degenerative change is present manifest as a small spur projecting from the coronoid process.
>
> "Impression: minor degenerative change, left elbow. Otherwise negative left elbow.
>
> "The chest in frontal and lateral projections shows no significant change since the study of October 7, 1993.
>
> "Impression: slight enlargement of the left ventricle with normal great vessels. Negative lungs, bony thorax and diaphragm except for minor degenerative change affecting the dorsal spine. Otherwise negative chest.
>
> "Procedure: Spine cervical min[imal] views.
>
> "Clinical history: Cervical neck pain R/O [rule out] injury.

[13] *See supra* note 1.

"Report: reversal of the normal cervical curvature suggest muscular spasm. No fracture or subluxation."

While Dr. Law was the only physician of record to provide a complete history of injury and has diagnosed appellant with mild cervical spondylosis, possible myelopathy, lumbar spine spondylosis, and indicated that appellant may also have fibromyalgia, he did not provide a reasoned medical opinion supported by objective findings as to the medical connection between appellant's diagnosed conditions and factors of appellant's federal employment. Moreover, neither Dr. Bradburn nor Dr. Lewis provided a complete history of injury, an acceptable diagnosis since pain is not a diagnosis, or a reasoned medical opinion supported by objective findings as to the medical connection between appellant's diagnosed conditions and factors of her federal employment. For example, none of the physicians of record described appellant's specific work duties in any detail or provided medical reasoning explaining how or why two patients fighting in the day room of appellant's federal employing establishment, and her attempting to break them up by grabbing one patient, and having both patients fall on top of her caused, or contributed to the presence or occurrence of a specific medical condition. None of the physicians of record provided a comprehensive and rational medical opinion explaining the causal relationship between appellant's diagnosed conditions and any workplace factors.[14] Therefore, these documents are of limited probative value and are insufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation, or appellant's belief of causal relationship. The mere fact that a disease or condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition[15] does not raise an inference of causal relationship between the condition and the employment factors. 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. Causal relationship must be established by rationalized medical opinion evidence and appellant has failed to submit such evidence in the present case.[16] As appellant has not submitted rationalized medical evidence explaining how and why the diagnosed condition was caused or aggravated by her federal employment, the Office properly denied appellant's claim for compensation.

[14] *Charles H. Tomasezewski,* 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 relationship); *see also George Randolph Taylor,* 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

[15] *Richard B. Cissel,* 32 ECAB 1910, 1917 (1981).

[16] *Victor J. Woodhams,* 41 ECAB 345 (1989).

The decisions of the Office of Workers' Compensation Programs dated March 20, 1997 and April 30, 1996 are hereby affirmed.

Dated, Washington, D.C.
April 26, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member