U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VALERIE J. WINIESDORFFER and U.S. POSTAL SERVICE, POST OFFICE, Allen Park, MI

Docket No. 97-2598; Submitted on the Record;
Issued August 18, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a traumatic injury on August 15, 1994 causally related to factors of employment; and (2) whether her back condition is causally related to factors of employment.

On November 18, 1994 appellant, then a 36-year-old letter carrier, filed an occupational disease claim, alleging that she sprained her right sacroiliac joint while lifting and carrying heavy bundles of mail. She stated that she became aware of the condition on August 15, 1994 informed her supervisor on September 27, 1994 and stopped work on October 6, 1994. In a statement dated November 28, 1994, she noted that she had visited a chiropractor on August 7, 1994 and first saw a physician on September 16, 1994. She stated that she first noticed pain on August 15, 1994 when she was lifting a 35-pound push cart onto her employing establishment vehicle. She stated that she had to lift the cart approximately 10 times daily. She also described her daily work activities of casing and delivering mail. By letter dated December 22, 1994, the Office of Workers' Compensation Programs informed appellant of the type evidence needed to support her claim. She returned to limited duty on February 11, 1995,[1] and on February 18, 1995 filed a Form CA-1, claim for continuation of pay/compensation regarding the August 15, 1994 injury.

Following further development, by decision dated May 2, 1995, the Office denied the claim on the grounds that the medical evidence failed to establish that the claimed condition was causally related to employment. Appellant requested a hearing that was held on November 30, 1995. In a decision dated April 1, 1996 and finalized April 2, 1996, an Office hearing representative accepted that appellant's work duties included lifting and carrying and that on August 15, 1994 she lifted a cart and felt a strain in her back. The hearing representative

[1] The limited-duty position consisted of sorting mail to a carrier case with a 20-pound lifting/carrying restriction and avoidance of repetitive bending, twisting, stooping and overhead work with sedentary clerical activities. She returned to full duty at some point but had resumed limited duty at the time of the hearing.

found, however, that appellant did not establish that she sustained an employment-related injury because she failed to submit rationalized medical evidence to establish causal relationship. Appellant timely requested reconsideration and submitted additional medical evidence. By decision dated June 24, 1997, the Office denied modification of the prior decision. The instant appeal follows.

The relevant medical evidence includes[2] a November 11, 1994 report from Dr. W.B. Mikesell, Jr., a general practitioner, who noted that he first saw appellant on September 16, 1994 when he diagnosed sciatic nerve irritation and advised that she could not work from September 27 to October 6, 1994 and referred her to Dr. In Kwang Yoon, a Board-certified physiatrist. A September 16, 1994 x-ray of the lumbosacral spine revealed moderate exaggeration of lumbar lordosis indicating an unstable and probably symptomatic low back. In a November 29, 1994 attending physician's report, Dr. Mikesell diagnosed sacroiliac sprain and checked the "yes" box, indicating that appellant's condition was employment related. A November 30, 1994 computerized tomography of the lumbar spine revealed discogenic and degenerative changes with disc bulging at L2-3 and L3-4. Appellant underwent a series of lumbar steroid injections and pain management in November and December 1994.

In a February 8, 1995 report, Dr. D. Zikowski, a Board-certified anesthesiologist, advised that she could return to work with restrictions. In a November 27, 1995 report, Dr. Yoon advised that he had first seen appellant on October 7, 1994 when he diagnosed right sacroiliac sprain without nerve root compromise which was caused by the repetitive lifting of her 35-pound cart into her employing establishment vehicle. A March 8, 1996 magnetic resonance imaging of the lumbar spine revealed degenerative changes with mild bulging at L2-3 and a herniated disc at L5-S1 with impingement. Dr. David F. Peck, a Board-certified family practitioner, provided a June 20, 1996 report, in which he reported appellant's history of injury on August 15, 1994 and diagnosed lumbar strain with herniated disc at L5-S1 and advised that work aggravated her condition. Dr. Peck reiterated his conclusions in a March 3, 1997 report, continuing that the back condition would continue to bother her, especially if she continued to twist and bend and work outside on a daily basis.

Initially, the Board finds that appellant failed to establish that she sustained an injury on August 15, 1994.

An employee seeking benefits under the Act[3] has the burden of establishing the essential elements of his or her claim[4] including the fact that the individual is an "employee of the United

[2] Appellant also submitted a December 13, 1995 report from chiropractor, Dr. Kathleen M. Rohlig, who advised that she saw appellant on August 17, 1994 and diagnosed sacroiliac sprain. The Board notes that Dr. Rohlig cannot be considered a physician under the Federal Employees' Compensation Act as section 8101(2) provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. *Sheila A. Johnson*, 46 ECAB 323 (1994). Such is not the case here. She also submitted evidence that did not contain an opinion regarding the cause of her condition.

[3] 5 U.S.C. §§ 8101-8193.

[4] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

States" within the meaning of the Act,[5] that the claim was timely filed within the applicable time limitation period of the Act,[6] 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.[7] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8] Office 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. The injury must be caused by a specific event or incident or series of events or incidents within a single workday or work shift. An occupational disease or illness is defined as a condition produced in the work environment over a period longer than a single workday or shift by such factors as systemic infection; continued or repeated stress or strain; or exposure to hazardous elements such as, but not limited to, toxins, poisons, fumes, noise, particulates, or radiation, or other continued or repeated conditions or factors of the work environment.[9]

Causal relationship is a medical issue,[10] and the medical evidence required to establish a causal relationship is rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[11] Moreover, neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[12]

The Board finds that appellant has not established that the August 15, 1994 employment incident resulted in an injury as the record contains no rationalized medical evidence that relates appellant's condition to the employment incident. The Board has held that merely checking a box on an Office form, by a physician, is insufficient to establish causal relationship.[13] While

[5] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[6] 5 U.S.C. § 8122.

[7] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[8] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[10] *Mary J. Briggs*, 37 ECAB 578 (1986).

[11] *Gary L. Fowler*, 45 ECAB 365 (1994); *Victor J. Woodhams*, *supra* note 8.

[12] *Minnie L. Bryson*, 44 ECAB 713 (1993); *Froilan Negron Marrero*, 33 ECAB 796 (182).

[13] *See Debra S. King*, 44 ECAB 203 (1992).

appellant submitted medical reports from several physicians who diagnosed a back condition, these reports are not sufficient to meet appellant's burden of proof, as they contain no medical rationale explaining how the August 15, 1994 incident caused her back condition.

The Board, however, finds that this case is not in posture for decision regarding whether appellant sustained an injury causally related to factors of employment.

In the instant case, appellant submitted a November 27, 1995 report, in which Dr. Yoon advised that her right sacroiliac sprain was caused by the repetitive lifting of her 35-pound cart into her employing establishment vehicle. Likewise, in reports dated June 20, 1996 and March 3, 1997, Dr. Peck opined that appellant's back condition was employment related. While these reports are insufficient to establish entitlement, the fact that they contain deficiencies preventing appellant from discharging her burden does not mean that they may be completely disregarded by the Office. It merely means that their probative value is diminished. As both Drs. Yoon and Peck indicated that appellant's condition was caused or aggravated by employment factors, their opinions are sufficient to require further development of the record.[14] It is well established that proceedings under the Act[15] are not adversarial in nature,[16] and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[17] On remand the Office should refer appellant to an appropriate Board-certified specialist for a rationalized medical opinion to determine if appellant's back condition was caused or aggravated by employment. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

[14] *See John J. Carlone*, 41 ECAB 354 (1989). The Board notes that the case record does not contain a medical opinion contrary to appellant's claim in this matter and further notes that the Office did not seek advice from an Office medical adviser or refer the case for a second opinion evaluation.

[15] 5 U.S.C. §§ 8101-8193.

[16] *See, e.g., Walter A. Fundinger, Jr.*, 37 ECAB 200 (1985).

[17] *See Dorothy L. Sidwell*, 36 ECAB 699 (1985).

The decision of the Office of Workers' Compensation Programs dated June 24, 1997 is hereby set aside and the case is remanded to the Office for proceedings consistent with this opinion.

Dated, Washington, D.C.
August 18, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member