U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA A. PERALES and U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Corpus Christi, TX

Docket No. 97-2737; Submitted on the Record;
Issued December 29, 1999

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty.

On November 21, 1996 appellant, a 54-year-old maintenance support clerk, filed a Form CA-1 claim based on traumatic injury, alleging that on the date of her claim she sustained an injury in the performance of duty. Appellant did not specify the nature of her injury, nor did she provide a description of how the alleged injury occurred on the form; she merely wrote the words "See attachment" in the sections of the form pertaining to "cause of injury" and "nature of injury."

In a letter dated November 25, 1996, the employing establishment controverted appellant's claim. The employing establishment stated that "[appellant] claims to have received multiple injuries as a result of a fall at work, please see attached statement from employee. Although ... the [employing establishment] does not dispute the fall itself, it does challenge injury to the back and neck received as a result of the fall." The statement to which appellant and the employing establishment refer is not contained in the record. The record does contain a brief statement dated November 22, 1996, apparently from a coworker, in which the coworker asserts:

> "[Appellant] and I were talking briefly during Ginger's Baby Shower party yesterday. She was telling me she [had] been out all week because of an aneurysm. She pointed to the back of the ear or towards the back of her head. She said she had n[o]t been feeling well. There was so much commotion going on with the party that I was n[o]t paying close attention to what she was telling me and we were interrupted almost immediately. She left the party really quick and later I found out she had collapsed somewhere on the workroom floor."

In a letter to appellant dated December 13, 1996, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of her claim, including a medical report and opinion from a physician, supported by medical reasons, describing the history of the alleged work incident, and indicating how the reported work incident caused or aggravated the claimed injury, plus a diagnosis and clinical course of treatment for the injury. The Office also requested a statement from appellant describing in detail exactly how the injury occurred and the immediate effects of the injury, and requested names and addresses of persons who may have witnessed the work incident or had immediate knowledge of it. The Office informed the employee that she had 20 days to submit the requested information.

By decision dated January 10, 1997, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[2] 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.[3]

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.[4] 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.[5] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized 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

[1] 5 U.S.C. §§ 8101-8193.

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

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

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

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

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.[6]

The Board finds that appellant has failed to submit evidence establishing that she sustained an injury on November 21, 1996. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[7] The employee has the burden of establishing the occurrence of the alleged injury at the time, place and manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast doubt upon the validity of the claim; however, her statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.[8]

The only medical evidence of record received prior to the Office's January 10, 1997 decision is the hospital operative report of Drs. Fred P. Thomas and Claude McLelland. These physicians described a retroesophageal abscess secondary to perforated cervical esophagus with upper medial stinitis. The physicians described the surgical procedure performed to correct this medical condition on November 26, 1996 but did not relate the medical condition or surgical procedure to appellant's alleged fall at work on November 21, 1996. This being the case, appellant has not submitted evidence establishing that she sustained an injury in the performance of duty on November 21, 1996.[9]

[6] *Id.*

[7] *Merton J. Sills*, 39 ECAB 572 (1988).

[8] *Carmen Dickerson*, 36 ECAB 409 (1985).

[9] Appellant submitted numerous medical records subsequent to the Office decision dated January 10, 1997. However, under the Board's rule 501.2(c), it may not consider evidence not previously considered by the Office. Appellant may request reconsideration and submit all the evidence she submitted which was received by the Office on January 14, 1999 and later.

The decision of the Office of Workers' Compensation Programs dated January 10, 1997 is hereby affirmed.

Dated, Washington, D.C.
December 29, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member