U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONNA E. WILLETT and U.S. POSTAL SERVICE,
POST OFFICE, Sunrise, FL

Docket No. 98-898; Submitted on the Record;
Issued December 16, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
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 May 1, 1997.

On May 1, 1997 appellant, then a 50-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that she "was bent over into a large hamper when it was rammed from left side moving me, hurting left ankle and hamstring area…. Twisted or jolted ankles -- left hamstring pull." She alleged the injury was deliberately caused by Ronni Viola, a coworker, on May 1, 1997 at 5:45 a.m. and that she notified her supervisor and received medical attention the same day from First-Med in Plantation, Florida. Appellant stopped work at about 1:30 p.m. on May 1, 1997.

William T. Young, appellant's supervisor, submitted a May 1, 1997 letter stating that there was an earlier discussion concerning the hampers between he, appellant and Ms. Viola. He noted that he learned of appellant's injury around 9:00 a.m. when Sue Kearns, a manager, notified him that she was taking appellant to a doctor for an injury she sustained when the hampers were pushed earlier that day and before this he knew nothing about an injury or threats between the distribution clerks. He made note that there was much dislike between appellant and Ms. Viola.

A May 1, 1997 attending physician's report (CA-16) from a Dr. Newman, a family practitioner at First-Med, whose full name is illegible, revealed that appellant had no history or evidence of concurrent or preexisting injury or physical impairment, did not require hospitalization and could immediately resume light-duty work with limited standing, walking four hours per day, mostly sitting in a chair as opposed to a stool. No diagnosis was given.

In written statements received by the Office on May 30, 1997 from various coworkers and appellant's supervisors, the alleged assault and appellant's injury were questioned as one supervisor noted that he noticed no swelling of appellant's ankles and occasionally observed her

limping. A coworker stated that she saw appellant entering a department store on the same day of the alleged injury at about 3:00 p.m.

In a duty status report dated May 1, 1997, appellant was diagnosed with right and left ankle strain by Dr. Newman. He check marked "yes" that the history of injury corresponded to the description of how appellant alleged the injury occurred.

By followup treatment report dated May 5, 1997, appellant was treated for right and left ankle sprain and requested to work "mostly sitting" and to follow up again on May 8, 1997.

In a duty status report from First-Med dated May 13, 1997 appellant was released to full-duty work.

In a June 16, 1997 decision, the Office rejected appellant's claim noting that the evidence of record did not support fact of injury as alleged. The Office also terminated all authorization for medical treatment.

By letter dated July 14, 1997, received by the Office on July 21, 1997, appellant, through her representative, requested a review of the written record. In support of her request, appellant submitted handwritten reports and follow-up reports from First-Med dated May 1 and 13, 1997. The reports revealed that x-rays of appellant's left and right ankles were taken and that she was given Estraderm and Motrin for relief of pain due to her left and right ankle sprains. Appellant was restricted to limited standing and walking.

By decision dated November 12, 1997, finalized on November 13, 1997, the Office hearing representative affirmed the Office's June 16, 1997 decision. The hearing representative noted that witness statements did not support that Ms. Viola deliberately pushed a hamper so as to cause injury to appellant. The hearing representative further found that the medical evidence was insufficient to establish the claim.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on May 1, 1997, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the Unites 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.[1] These are the essential elements of each and every compensation claim regardless of whether the claim is predicted upon a traumatic injury or an occupational disease.[2]

[1] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[2] *See Delores C. Ellyett*, 41 ECAB 992, 994 (1990).

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.[3] 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.[4] 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 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.[5]

The evidence in the present case suggests that some sort of bumping most likely occurred, intentional or not, because in all witnesses statements there was indication and complaints about hampers being pushed and pulled in and out of place. Ms. Viola stated "here we go again, shoving the hampers out of sequence again." Manager Sue Kerns noted "I specifically instructed [appellant] to maintain the proper sequence of placement." Pamela Julien, another co-worker, stated "For the past few weeks we would fix [the hampers] properly and as soon as we moved away [appellant] would push them out again." Therefore, the Board will modify the Office's decision and find that a bumping incident occurred on May 1, 1997.

However, the question of whether an employment incident caused a personal injury generally can only be established by medical evidence[6] and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on May 1, 1997 caused a personal injury and resultant disability.

In the present case, the only medical evidence bearing on causal relationship are duty status reports from Dr. Newman, in which he noted "Employee lost balance, twisting ankle when [a] hamper being work from was struck by another hamper" and several handwritten reports from Dr. Newman indicating that appellant was x-rayed and treated for left and right ankle sprains. None of these reports provide a probative, rationalized medical opinion explaining how appellant would have sustained bilateral ankle sprains as a result of the accepted incident. The medical reports of record are not sufficient to establish that appellant sustained an injury or disability on May 1, 1997 causally related to employment factors.

Lastly, notwithstanding the Board's affirmance of the Office's June 16, 1997 decision denying benefits, the Board finds that appellant is still entitled to reimbursement for or payment

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

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

[5] *Id.*

[6] *See supra* note 3.

of expenses incurred for medical treatment for the period May 1, 1997, the date the employing establishment official signed the Form CA-16, authorization for examination and/or treatment, to June 16, 1997, the first date on which the Office advised appellant that authorization for medical treatment was terminated. By Form CA-16, authorization for examination and/or treatment, signed by the employing establishment official on May 1, 1997 the employing establishment authorized Dr. Newman to provide medical care for a period of up 60 days from that date. The employing establishment's authorization for appellant to obtain medical examinations and/or treatment created a contractual obligation to pay for the cost of necessary medical treatment and emergency surgery regardless of the action taken on the claim.[7]

The decision of the Office of Workers' Compensation Programs finalized on November 13, 1997 is hereby affirmed as modified.

Dated, Washington, D.C.
December 16, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[7] *Robert F. Hamilton*, 41 ECAB 431 (1990); *Frederick J. Williams*, 35 ECAB 805 (1984); 20 C.F.R. § 10.403.