

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MISUK ARCHER and DEFENSE LOGISTICS AGENCY,
TINKER AIR FORCE BASE COMMISSARY, TINKER AIR FORCE BASE,
Okla.

*Docket No. 97-1116; Submitted on the Record;
Issued February 18, 1999*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained traumatic back injury in the performance of duty on June 16, 1995, causally related to factors of her federal employment.

On June 26, 1995 appellant, then a 32-year-old accounting technician, filed a claim alleging that on June 16, 1995 she sustained traumatic back injury while bending, stooping and squatting to hang shelf labels. She stated that after she hung the labels she began to feel intense lower back pain which radiated down her right leg.

In support of her claim appellant submitted medical reports from 1994, medical reports from 1995 predating June 16, 1995, a work excuse dated June 16, 1995 and a July 5, 1995 form report from Dr. David M. Bailey, a Board-certified internist. He noted the date of injury as June 16, 1995, noted that appellant performed a duty which required her to bend, stoop and squat and noted that she felt strain and pain/burning in her lower back which radiated down her right leg. Dr. Bailey noted that she had a history of lower back pain and was recovering from an August 24, 1994 lower back injury. He diagnosed nonspecific low back pain, checked "yes" indicating that the condition found was caused or aggravated by an employment activity and noted "h[istory] consistent with injury." Also submitted was a July 21, 1995 psychologist's report which diagnosed major depression and which noted suicide attempts in May 1988 and on May 6, 1995. A July 24, 1995 form report from Dr. Bailey was submitted stating the same as his July 5, 1995 report. A July 29, 1995 magnetic resonance imaging (MRI) scan of the lumbar spine was reported as showing degenerative disc changes at L5-S1 and a small posterior annular tear. An August 7, 1995 report from Dr. Bailey discussed appellant's MRI results and her pain medication.

By letter dated September 12, 1995, the Office of Workers' Compensation Programs requested further information on appellant's injury including a history of injury and a physician's opinion supporting causal relation.

In response appellant submitted her own statement, statements from witnesses, dates of medical appointments, a list of medications she was on and dates lost from work since her 1994 injury. A September 15, 1995 report from Manuel Crespo, an osteopath, stated that appellant had a long history of back pain; it discussed her MRI results and her medications, reported the findings upon examination and diagnosed: “1. Chronic back pain; 2. Thoracic strain; 3. Lumbar strain; 4. Sacroiliac strain; 5. Malaligned vertebrae, pelvis and sacrum; 6. Depression; [and] 7. Part of pain inappropriate for findings.” He did not mention a June 16, 1995 injury. A September 29, 1995 report from Dr. Bailey noted appellant’s continuing pain symptoms and noted that, by history, her current symptoms began at work on June 16, 1995. He stated that she did have an annular tear at L5-S1 “which could have been aggravated by work activities and could be contributing to her current symptoms.”

By decision dated December 13, 1995, the Office rejected appellant’s claim finding that she had failed to establish fact of injury. The Office stated that a medical condition resulting from the accepted incident was not supported by the medical evidence of record. The Office noted that “low back pain” was a symptom and not a condition and that the MRI report describing her history of injuries was not probative on causal relationship.

On January 28, 1996 appellant mentioned that reconsideration was being pursued and requested approval of a change in treating physicians.

An April 4, 1996 form report from Dr. James M. Johnson, a Board-certified family practitioner which noted the date of injury as June 16, 1995, noted as history that appellant stated that she was required to do work which required her to bend, stoop and squat, noted that she felt strain and pain/burning in her lower back which radiated down her right leg, noted that she had a history of low back pain and was recovering from an August 24, 1994 low back injury, and diagnosed “chronic sciatica -- prob[able] disc herniation.” He checked “yes” to the question of whether the condition found was caused or aggravated by an employment activity. A May 28, 1996 form report from Dr. Crespo stated the history in the same wording as Dr. Johnson’s report, and for all other questions referred the reader to his April 6, 1996 report. A May 31, 1996 report from Dr. Crespo referred appellant to a neurosurgeon.

On October 19, 1996 appellant, through her representative, requested reconsideration and a schedule award. A duplicate copy of Dr. Bailey’s September 29, 1995 report was submitted, and an October 23, 1995 report from Dr. Bailey which did not address causal relation was also included. A physical therapy report was submitted, and two internal medicine follow-up reports from Dr. Bailey dated November 29 and December 12, 1995 which did not discuss causal relation were submitted.

On October 22, 1996 a February 20, 1996 addendum to the previously submitted July 29, 1995 MRI report was submitted from Dr. Phillip H. Stratemeier, a Board-certified diagnostic radiologist, which noted that the essence of the report was unchanged but reported a slightly different history of injury indicating that appellant had a four-year history of low back pain, that she was “re-injured on 24 August 1994,” and “re-injured on 16 June 1995 doing some bending and squatting.” He did not discuss causal relation between the degenerative changes at L5-S1 or the small posterior annular tear and either “re-injury.” A June 16, 1995 report from Dr. Bailey was also submitted at that time which reported that appellant was “squatting down

lifting at work today and had the onset of low back pain and right leg pain. Her right leg pain ... has been present for about six hours.” He diagnosed “acute back and leg pain” but did not discuss causal relation with the contemporaneous activity. A November 15, 1995 medical report noted that appellant’s chief complaint was low back pain with right leg sciatica “which occurred since a lifting injury in August 1994.” A March 25, 1996 psychologist’s report was also submitted which discussed appellant’s depression and May 6, 1995 suicide attempt following increasing sensations of pain from the August 1994 back injury.

At that time appellant also submitted a December 22, 1995 report from Dr. Crespo which did not discuss causal relation of the diagnosed conditions of lumbosacral strain, somatic dysfunction, lumbosacral spine, muscle spasm, chronic back pain, bronchitis and sinusitis. Additionally at that time appellant submitted the April 6, 1996 report referred to in Dr. Crespo’s previously submitted May 28, 1996 form report. The report discussed appellant’s August 24, 1994 injury and its relationship to her employment, her interim treatment, and the July 29, 1995 MRI results, and included “the expert medical opinion that this was the cause of her back pain and radicular symptoms.” The report did not mention any incident or injury occurring on June 16, 1995. It did, however, include her work tolerances.

On November 18, 1996 a September 17, 1996 report was submitted from Dr. Griffith C. Miller, a family practitioner. He noted as history that appellant reported that on June 16, 1995 she injured herself while bending down squatting applying labels to shelves. Dr. Miller noted that she had previous small low back injury in 1984, he described her current symptoms, conducted a physical examination, reviewed the previous medical reports, summarizing and narrating their results and findings, and included the opinion that appellant “was temporarily totally impaired from June 16[, 1995] until ... December 12, 1995.” However, no original discussion on Dr. Miller’s part, of causal relation between the June 16, 1995 bending incident and appellant’s diagnosed pathologies, was included. He opined that appellant had a 54.4 percent total permanent disability due to limited range of lumbar spine motion, pain and rigidity, radiculopathy and depression. Multiple further physical therapy reports were submitted. Three further reports from Dr. Bailey dated June 22 and 27, 1995 were submitted which did not discuss the June 16, 1995 incident. He opined that appellant’s history and physical examination suggested a significant emotional component. In a report dated September 18, 1995, Dr. Bailey noted that appellant’s “current symptoms began in June while at work. I initially saw [appellant] for this episode on June 16, 1995.” No discussion of causal relation was included. Also submitted were Dr. Bailey’s additional reports dated September 18, August 7 and 28, July 24 and July 11, 1995, none of which discussed causal relation of appellant’s condition to the alleged June 16, 1995 bending incident.

By decision dated November 25, 1996, the Office denied appellant’s claim finding that the medical evidence of record did not support causal relationship.

The Board finds that appellant has failed to establish that she sustained traumatic back injury in the performance of duty on June 16, 1995, causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² These are essential elements of each 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 In this case appellant has failed to submit such medical evidence.

Appellant has the burden of establishing by the weight of reliable, probative and substantial evidence that the injury claimed was caused or aggravated by her federal employment. As part of this burden, appellant must submit a rationalized medical opinion, based upon a complete and accurate factual and medical background, showing a causal relationship between the injury claimed and factors of her federal employment.⁶ Causal relationship is a medical issue that can be established only by medical evidence.⁷ The Board notes that the fact that a condition manifests itself or worsens during a period of employment does not raise an inference of an employment relationship.⁸ The Board further notes that mere conclusions on causal relationship, such as the ones expressed on the form reports in this case by checking "yes," without supporting rationale are of little probative value.⁹

In the instant case, the medical evidence submitted from Dr. Bailey does nothing more than note the contemporaneous occurrence of symptomatology with some work activities; he does not discuss causal relationship between the bending activities and appellant's subsequently

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

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).

⁶ *Steven R. Piper*, 39 ECAB 312 (1987); see 20 C.F.R. § 10.110(a).

⁷ *Mary J. Briggs*, 37 ECAB 578 (1986); *Ausberto Guzman*, 25 ECAB 362 (1974).

⁸ *Paul D. Weiss*, 36 ECAB 720 (1985); *Hugh C. Dalton*, 36 ECAB 462 (1985).

⁹ See *Richard Giordano*, 36 ECAB 134 (1984).

diagnosed objectively documented pathology or explain the mechanical and physiological processes involved in the occurrence of these “injuries.” Further, his diagnosis of appellant’s “injuries” most contemporaneous to June 16, 1995 is “nonspecific low back pain,” which is considered to be merely a symptom and not a compensable diagnosis. In Dr. Bailey’s September 29, 1995 report he speculated that appellant’s annular tear “could have been aggravated by work activities and could be contributing to her current symptoms.” As this opinion on causal relationship is couched in clearly speculative terms it is of little probative value.¹⁰ Further, Dr. Bailey’s later reports suggested that appellant’s problems had a significant emotional component, which does not support her claim.

The pre-June 16, 1995 medical evidence and most of the medical histories reported after that date relate that appellant had a long history of low back pain, and/or was suffering from the effects of an August 1994 low back injury as opposed to a June 16, 1995 low back injury. The MRI report and its addendum merely report a history as given by appellant to the physician and do not support or discuss causal relation. Hence they are not probative on that issue. Dr. Crespo’s reports do not discuss causal relation of any of appellant’s diagnosed conditions with a June 16, 1995 injury and, in his April 6, 1996 report he discussed appellant’s condition in relation to the 1994 injury. The form report from Dr. Johnson merely reported a history as given by appellant and did not explain or discuss causal relation. Dr. Miller merely reported a history as given by appellant and then recounted the substance of the other medical reports. It lacked any independent discussion on causal relation, and hence has no probative value in that respect. Finally, the physical therapy reports submitted by appellant have no probative value on the issue of causal relation as a physical therapist is not a “physician” as defined by 5 U.S.C. § 8101(2), such that their reports, therefore, do not constitute competent medical evidence to support appellant’s claim.¹¹

As appellant has not submitted any even partially rationalized medical evidence identifying a specific objective injury and causally relating it to specific incidents on June 16, 1995, she has not only failed to establish her claim, but has failed to provide evidence sufficient to warrant further development of her claim by the Office, particularly in light of the contrary medical evidence of record supporting that her symptoms were preexisting, were related to a 1994 injury and had a significant emotional component.

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

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

¹⁰ See *Philip J. Deroo*, 39 ECAB 1294 (1988) (although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee’s complaints “could have been” related to her work injury was speculative and of limited probative value).

¹¹ *Theresa K. McKenna*, 30 ECAB 702 (1979); see *Barbara J. Williams*, 40 ECAB 649 (1988) (physical therapist not a “physician”).

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member