

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN L. CARTER and DEPARTMENT OF THE ARMY,
AMMUNITION PLANT, McAlester, Okla.

*Docket No. 97-1807; Submitted on the Record;
Issued May 18, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

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

On October 20, 1994 appellant, then a 47-year-old explosives worker, filed a notice of traumatic injury and claim for compensation, alleging that on April 20, 1992 as the result of lifting heavy projectiles at work, she developed a femoral hernia in her left lower abdominal wall. On the reverse side of the CA-1 form, appellant's supervisor noted that appellant was on leave on April 20, 1992. He further noted that he was unaware of appellant's injury until receipt of the CA-1 form.

In support of her claim, appellant submitted an October 7, 1994 report from Dr. Ross M. Taylor, a Board-certified gastroenterologist. The doctor noted that he initially treated appellant during a hospitalization in October of 1993 for complaints of abdominal pain, rectal bleeding, nausea, vomiting and upper abdominal distress. According to Dr. Taylor, appellant experienced substantial postoperative digestive problems following a left femoral herniorrhaphy performed in April 1993. An upper GI series performed in October 1993 was described by the doctor as revealing a small hiatus hernia with gastroesophageal reflux and mild nonspecific gastritis and duodenitis without active ulcerations, along with mild chronic and inflammatory changes in the stomach and esophagus consistent with a bacterial infection. Dr. Taylor noted that appellant's condition improved, over the next few months after treatment, but that it did not completely resolve. He concluded that appellant's gastro-intestinal conditions could, in part, be related to the anti-steroid inflammatory medication appellant received and some form of prior work injury.

By letters dated March 1, 1995, the Office of Workers' Compensation Programs requested that appellant submit additional evidence including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated her claimed injury. The Office also requested that appellant explain why she did not sooner report the injury

to her supervisor and asked her to explain the immediate effects of the injury and why she delayed seeking medical treatment.

In a decision dated March 30, 1995, the Office denied appellant's claim for compensation on the grounds that appellant failed to establish fact of injury. The Office specifically found that appellant failed to establish that the work incident occurred at the time, place and in the manner alleged. The Office also concluded that there was insufficient medical evidence to establish that appellant's medical condition was causally related to the alleged work injury.

After the decision was issued, appellant requested reconsideration and submitted answers to an Office questionnaire which listed the date of her injury as April 14, 1992 and not April 20, 1992. She stated that, on April 14, 1992, she complained to her supervisor and Dr. Walter G. Reed, a general practitioner at the employing establishment's health unit, that she had a knot in her lower abdomen. Appellant was scheduled to see Dr. Reed that day regarding a prior leg injury. According to appellant, Dr. Reed advised her to see her family physician. She stated that the next day when she told her physical therapist about the knot, he suggested that it might be a hernia.

Along with her April 3, 1995 letter, appellant submitted certain medical records covering 1990 to 1992. None of the evidence referenced an April 1992 work injury.¹

In a merit decision dated April 6, 1995, the Office denied modification of its prior decision.

By letter dated May 15, 1995, appellant filed a second request for reconsideration, but she did not submit any additional evidence.

In a decision dated June 16, 1995, the Office denied appellant's request for merit review.

On July 16, 1995 appellant filed her third request for reconsideration. Appellant reiterated that she mentioned a knot in her stomach to Dr. Reed on April 13, 1992 when she was being examined for a left leg condition. She noted that Dr. Reed was reluctant to examine the knot and did not mention it in his treatment notes because he had been charged with sexual harassment charges. She stated that she informed an employing establishment manager of Dr. Reed's reluctance to perform an examination on the same day.

Along with the July 16, 1995 letter, appellant submitted a July 12, 1995 report, from Dr. Taylor. He indicated that appellant experienced a work-related injury on April 20, 1992 but he did not identify the history or nature of the injury. Dr. Taylor noted that appellant's injury was associated with the traumatic development of a hernia which later required surgery. According to Dr. Taylor, during the treatment of appellant's back and abdominal pain, appellant was given anti-inflammatory agents and when he first treated appellant in October 1993, she was having symptoms of dyspepsia and GI bleeding. Based on the results of an October 1993 upper GI series, the doctor opined that appellant had a possible drug-induced injury including a rather

¹ Appellant also submitted copies of CA-1 forms reporting a right arm injury on October 11, 1990 and a left leg injury on March 6, 1991 and a copy of a CA-2 form for occupational exposure to chemicals.

substantial amount of erythema, friability and superficial mucosal hemorrhaging in the body of the stomach and duodenum. He concluded that “it certainly is not beyond question that [appellant’s condition] may have been at least substantially contributed to by the long term use of non-steroid, anti-inflammatory agents which were necessitated, according to her story, by the work-related injury.”

She also submitted an April 13, 1992 memorandum from an employing establishment Equal Employment Opportunity manager, Coluah Stanfield, who stated that appellant visited her office on that date to complain that a physician at the employing establishment’s health unit had refused to perform an abdominal examination on her because he was under investigation for sexual harassment charges. By appellant’s account in the memorandum, when the doctor finally checked her lower left abdomen and felt a knot, he told her he thought it was a hernia, advised her to see her treating physician, but refused to document the examination. Ms. Stanfield related appellant’s complaints of having stomach pain after lifting projectiles weighing approximately 35 to 50 pounds.

In a decision dated July 31, 1995, the Office performed a merit review but denied modification of its prior decision, noting that appellant had not established that the claimed incident occurred as alleged.

On May 9, 1996 counsel for appellant requested reconsideration of the July decision and submitted two affidavits along with a medical report from Dr. Richter. Counsel for appellant noted that appellant’s date of injury was not April 20, 1992. He stated that appellant had consistently maintained that the date of her injury was April 13, 1992.

In a May 6, 1996 affidavit, Harold E. Washington, a retired safety and occupational health specialist, who worked at the employing establishment in 1992, related appellant’s statement that on April 13, 1993 she had complained to her supervisor of a knot in her lower abdomen. He noted being aware that Dr. Reed had been cited for sexual harassment during the time in question. However, Mr. Washington advised that there was no paperwork on appellant’s April 13, 1993 injury and that he was not present on April 13, 1993 to witness the lifting incident. He did note his awareness of the type of work performed by appellant and that this included removing explosives from projectiles weighing 50 to 60 pounds.²

In a February 12, 1996 report, Dr. Ralph W. Richter noted that appellant lifted projectiles weighing 40 to 50 pounds in her job over a 2-year period. Dr. Richter described injuries occurring to appellant on December 3, 1991 and March 16, 1992. He then stated that an additional injury occurred on April 13, 1992 but he did not discuss the history of the injury. He concluded that the April 13, 1992 injury “apparently” caused an irritation and entrapment injury to the left femoral nerve which led directly to the femoral hernia and subsequently required surgical repair.

² Another affidavit by a fellow employee relates to a work-related leg injury which occurred on March 16, 1992 and is not relevant to this claim.

In a decision dated September 6, 1996, the Office performed a merit review but denied modification on the grounds that the new evidence failed to establish fact of injury as appellant's statement that she was injured on April 13, 1992 was not consistent with the facts and circumstances of the case.

On December 18, 1996 counsel for appellant filed another request for reconsideration. Appellant's counsel submitted a June 28, 1991 progress note, Dr. Paul W. Hathaway, a Board-certified orthopedic surgeon, noted a history of "[previous] trauma [occupational] in fall." He described pressure in appellant's right, lower abdomen and opined that the pressure may be related to appellant's frequent lifting.³

Appellant's counsel also submitted treatment notes from Dr. Hendricks. In an April 15, 1992 note, Dr. Hendricks noted appellant's prior leg injury and that appellant had missed work on April 14 and 15, 1992. He did not mention treatment for a hernia or describe a history of injury related to lifting projectiles.

In a letter addressed to Dr. Lewis dated April 15, 1992, Dr. Hendricks advised that he was confused as to the etiology of appellant's continuing leg complaints and opined that her orthopedic problems had been resolved.

By decision dated March 24, 1997, the Office performed a limited examination of the evidence submitted with appellant's reconsideration request and found that evidence insufficient to warrant a merit review.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 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.⁵ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

³ Appellant's counsel submitted copies of selected excerpts from an Office hearing transcript dated October 17, 1994, medical records for the period of December to July 1991 predating appellant's alleged injury, and medical reports dated September 6 and 27, 1991 and April 10, 1992 by Dr. Hendricks which pertain to appellant's treatment for a work-related leg injury occurring on March 12, 1991. According to the hearing transcript, which pertains to a different claim a hearing representative suggested that appellant file a new claim for the hernia, which appellant attributed to her employment, as the claim before the hearing representative did not involve a hernia.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁶ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a “fact of injury” has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁸ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

In the instant case, the Office concluded that the evidence of record was insufficient to establish that a lifting incident occurred on April 20, 1993 as alleged on the (CA-1) claim or alternatively on April 13, 1992 as alleged by appellant on reconsideration. Contrary to the Office’s ruling, the affidavit from Ms. Stanfield corroborates appellant’s allegation that she sustained the incident on or about April 13, 1992 as appellant complained to Ms. Stanfield on April 13, 1992 of a knot in her abdomen which she related to lifting projectiles at work. Mr. Washington’s affidavit verifies that Dr. Reed was under investigation for sexual harassment, lending support to appellant’s contention that she sought medical treatment on April 13, 1992 with Dr. Reed for abdominal pain, but that he had initially refused to examine her and did not take any treatment notes because he was afraid of sexual harassment charges being filed against him. Mr. Washington also confirmed that appellant’s job required the lifting of projectiles weighing 50 to 60 pounds. Because an employee’s statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,⁹ the Board finds that a lifting incident occurred on or about April 13, 1992.

Notwithstanding, the Board also finds that appellant has submitted insufficient evidence to establish a causal relationship between her hernia and an employment incident of lifting projectiles. To establish causal relationship, appellant must submit a physician’s report, in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant’s medical history, state whether these employment factors caused or aggravated appellant’s diagnosed conditions and present medical rationale in support of his opinion.¹⁰

In support of her claim, appellant submitted medical treatment notes from Dr. Taylor, her treating physician. Dr. Taylor noted in an October 7, 1994 report, that appellant had surgery for a hernia and suffered gastro-intestinal problems due to the use of steroids. Dr. Taylor, did not offer an opinion on the cause of appellant’s hernia other than to relate appellant’s condition to “some form” of prior work injury. In a subsequent report dated July 12, 1995, Dr. Taylor noted that appellant experienced a work injury on April 20, 1992 but he did not identify the history or

⁷ *Elaine Pendleton, supra* note 5.

⁸ *Id.*

⁹ *Linda S. Christian, 46 ECAB 598 (1995).*

¹⁰ *See Woodhams, supra* note 6.

nature of the injury.¹¹ Because Dr. Taylor does not discuss that appellant was required to lift projectiles in her job, and he did not offer a rationalized opinion attributing appellant's hernia to the lifting of projectiles, Dr. Taylor's opinion is insufficient to establish causal relationship.

Furthermore, although Dr. Richter discussed appellant's history of lifting projectiles in his February 12, 1996 report, he could only state that April 13, 1992 "apparently" caused an irritation and entrapment injury to the left femoral nerve which led directly to the femoral hernia and subsequently required surgical repair. Dr. Hathaway likewise offered a speculative opinion that appellant's pressure in her lower abdomen "may be" related to frequent lifting in her job.¹²

Despite being advised of the deficiencies in her medical evidence appellant failed to submit a rationalized opinion addressing the issue of causal relationship and, therefore, failed to establish fact of injury. As appellant has failed to establish fact of injury, she is not entitled to compensation.

The decisions of the Office of Workers' Compensation Programs dated March 24, 1997 and September 6, 1996 are hereby affirmed as modified.

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

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹¹ Appellant was treated by Dr. Hendricks for a leg injury, but he never mentioned treatment for a hernia.

¹² The Board has often held that an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship. *Arthur Vilet*, 31 ECAB 366 (1979).