U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WENDY D. YUN and DEPARTMENT OF AGRICULTURE, FOREST SERVICE TAHOE, Nevada City, CA

Docket No. 99-657; Submitted on the Record;
Issued August 1, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on April 21, 1998 as alleged.

On April 29, 1998 appellant, then 30 years old, filed a (Form CA-2a) notice of recurrence of disability and claim for continuation of pay/compensation alleging an October 26, 1993 injury recurred causing her to experience pain, which "came unexpectedly and does not seem to be linked to a spontaneous action. The only possible action I can think of was standing for an extended period of time on Thursday, April 16[, 1998] and again on Sunday, April 19, 1998. I believe it is related to the original injury because the type and location of pain is similar."[1] On the reverse of the claim form signed May 5, 1998, Timothy Beddinger, appellant's acting supervisor, concurred with appellant's above statement and indicated that he "[h]ad [appellant] refrain from lifting and moving heavy objects once returned to full duty."

In support of her claim, appellant submitted a letter dated May 14, 1998 in which she stated:

> "On October 26, 1993 I suffered a low back injury while working. I received treatment for this injury from 1993 to 1995, which reduced the constant pain to occurring on and off. By May 1995, when I returned to regular duties, all symptoms of the injury had subsided. The pain was gone."

* * *

[1] The Board notes that the Office of Workers' Compensation Programs treated appellant's claim as a new injury as appellant stated that she believed that the pain she was experiencing was related to standing for extended periods of time on April 16 and 19, 1998.

> "On the night of April 21, 1998, my low back area began to ache. I applied some Ben-Gay cream, which alleviated the pain. The next morning, April 22, [1998] [I] started out pain free. My work that day was fairly typical; I was using the computer to draft a document. However, by late morning my low back was aching. Thinking that a change in position might help, I went for a walk, which did help to reduce the pain. Once again at the computer, the pain slowly increased. By the end of the day, I could not walk due to severe pain shooting down my legs from my back; it was especially painful in my right leg."

Appellant also submitted a November 10, 1993 x-ray report from Dr. Melisa M. Agnes, a radiologist, who diagnosed a normal lumbar spine with no evidence of subluxation, dislocation or fracture and April 23 and May 5, 1998 reports from Dr. Jeffrey Frost, Board certified in internal medicine, in which he assessed lumbar pain secondary to musculoskeletal causes and released her to work. Also submitted was a May 11, 1998 report from Dr. Corbett Riley, a chiropractor at Grass Valley Chiropractic. He noted that he had treated appellant for low back pain and bilateral radicular leg paresthesia since April 23, 1998. Dr. Riley noted that in recent and prior lumbar radiological study films of appellant he found disc narrowing at the L5-S1 level and indicated that it was his understanding that appellant was symptom free from 1995 after experiencing a 1993 industrial injury related to "pulling/lifting an auger." Dr. Riley also noted that appellant's response to chiropractic care was satisfactory and recommended acupuncture treatment for appellant to expedite her recovery.[2]

By letter dated July 14, 1998, the Office advised appellant and the employing establishment that additional information was required in reference to appellant's claim for a low back injury under the Federal Employees' Compensation Act[3] and requested a detailed description of employment factors appellant implicated in causing her condition.

By letter dated August 6, 1998, received by the Office on August 26, 1998, Dr. Frost indicated that appellant was under his care for chronic back pain, which began in 1993 when appellant was pulling willows. Dr. Frost stated:

> "This was considered an on-the-job injury because at the time she was working in the field service of the [employing establishment]. She had a sort of tool that got stuck and she wrenched her back. Her problems with her back continued after that for two years and then resolved only to have onset again in April 1998 when [appellant] was only standing, albeit she was on her job standing at a job fair. She stood all day and then for about a week or so she was sitting in meetings and working with computers at a desk job. It was over that time period that she developed severe back pain that was evaluated by us on April 23, 1998 for which there were no specific localizing neurologic findings. Serial examinations failed

[2] As Dr. Riley did not diagnose a subluxation based upon x-ray examination, his report does not constitute competent medical evidence to support a claim for compensation. Chiropractors are defined as "physicians" under 5 U.S.C. § 8101(2) only to the extent that the reimbursable services are limited to treatment of a subluxation by x-ray evidence.

[3] 5 U.S.C. §§ 8101-8193.

> to reveal any new onset of motor abnormalities or sensory abnormalities. [Appellant] was referred to physical therapy.
>
> "There is some concern whether this may be job related or not. For complete details on whether this is job related I would recommend that [appellant] be evaluated by a disability specialist, possibly a neurologist or neurosurgeon. It is unclear at this time whether her current pain is job related or not."

Appellant submitted a letter dated August 13, 1998, in which she gave detailed answers to the questions presented to her by the Office. She stated that she saw a physical therapist, specializing in back injuries. Appellant noted that the therapist refuted that her back pain was aggravated by standing and that it was more likely caused by sitting for long periods of time at her computer. However, no diagnosis from the therapist was presented.

By decision dated September 24, 1998, the Office denied appellant's claim finding that she failed to establish that she sustained an injury as alleged.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a low back injury in the performance of duty as alleged.

An employee seeking benefits under the 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 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.[4] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish a causal relationship is rationalized medical opinion 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

[4] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[6]

In support of her claim, appellant submitted medical reports from Dr. Frost dated April 23 and 29, May 5 and August 6, 1998, in which he assessed lumbar pain secondary to musculoskeletal causes including muscle spasm and Dr. Riley's May 11, 1998 report in which he opined disc narrowing at the L5-S1 level in films dated November 10, 1993 and in the lumbar radiological study. In order for these conditions to be covered under the Act, the evidence must demonstrate that the essential element of causal relationship has been met. The question of causal relationship is a medical issue, which usually requires a reasoned medical opinion for resolution. Causal relationship may be established by means of direct causation, aggravation, acceleration or precipitation.

The only evidence bearing on causal relationship is Dr. Frost's August 6, 1998 report in which he opined that appellant's work-related duties were responsible for her lumbar pain condition. Although this report suggested that appellant's work duties were causative factors of her lumbar pain condition, he submitted no medical rationale to explain how specific employment factors caused or contributed to the diagnosed condition. This report was also speculative as Dr. Frost noted in the latter part of his report, his concern as to whether the condition was employment related or not and recommended that appellant be referred to a neurologist or neurosurgeon to determine causal relationship. No such reports were received by the Office.

Appellant did not submit sufficient medical evidence to establish that she sustained a lumbar condition in the performance of duty causally related to factors of her employment.

[6] *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The decision of the Office of Workers' Compensation Programs dated September 24, 1998 is affirmed.

Dated, Washington, D.C.
August 1, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member