U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RENEE I. McCORMACK and U.S. POSTAL SERVICE
POST OFFICE, Baltimore, MD

Docket No. 99-1404; Submitted on the Record;
Issued August 8, 2000

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty.

On September 24, 1998 appellant, then a 37-year-old postal clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on September 22, 1998 she strained her back while sweeping 3C mail.[1] Appellant initially stopped work on September 22, 1998 and returned to work on September 24, 1998.

By letter dated October 16, 1998, the Office of Workers' Compensation Programs requested that appellant submit medical evidence explaining how the reported employment incident caused the claimed injury.

Appellant submitted additional documents, which were received by the Office on November 2, 1998. She submitted a September 22, 1998 duty status report (Form CA-17) from her physician, Dr. Steven Pondek, a Board-certified family practitioner. In his report, he indicated that the date of injury was September 21, 1998. He also indicated that appellant sustained a back strain due to lifting bundles. Appellant also submitted adult progress notes from September 22, 1998. The notes indicated that appellant had called on the morning of September 22, 1998 and retained an appointment for 2:00 p.m. that afternoon regarding lifting heavy magazines and a middle back strain. There was also an annotation that appellant was hurt last night.[2] There was a second page, which had a date of September 7, 1998 on the record, along with appointment date of September 22, 1998.[3] In his notes, Dr. Pondek wrote that

[1] On the claim form, appellant stated that the injury occurred on September 22, 1998 and her supervisor stated that she stopped work on September 21, 1998 at 11:00 p.m. It appears that the injury occurred sometime between the evening of September 21, 1998 and the morning of September 22, 1998.

[2] It can be inferred from this initial note that the injury occurred on September 21, 1998 in the night.

[3] The context of the record, consistent with the explanation on appeal, indicates that the September 7, 1998 date was the date of her last menstrual period (LMP). Appellant checked in for her 2:00 p.m. appointment at 2:09 p.m.

appellant was lifting magazines at the employing establishment, that back pains started the previous week and had gotten progressively worse. A report from an October 22, 1998 appointment stated that appellant's chronic backache was better and she had physical therapy planned. In an October 7, 1998 referral form, Dr. Pondek referred appellant to Health South for physical therapy and indicated that the chronic back strain was job related.

In a medical status report dated October 22, 1998, Dr. Pondek advised that appellant could return to work full duty but requested a chair for her back.

In a November 17, 1998 decision, the Office denied appellant's claim for failure to establish fact of injury.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty 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 United States within the meaning of the Act, that the claim was 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."[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[5]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[6] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of

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A subsequent similar report clearly contains a block for inserting an LMP date.

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

[5] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[6] *Elaine Pendleton*, *supra* note 4.

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

action.[8] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[9]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[10]

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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[11]

In the instant case, the Office concluded the evidence was insufficient to establish that the claimed incident occurred as alleged on September 21 or 22, 1998. Contrary to the Office's ruling, the evidence contains an essentially consistent history of the alleged incident. Initially, appellant stated that she sustained a strained back while sweeping 3C mail on September 22, 1998. In subsequent medical reports, supplied by appellant, her physician offered a similar account of her injury that occurred on or about September 21, 1998. Dr. Pondek's reports were consistent with a date of injury of September 21, 1998 and appellant's explanation of lifting heavy bundles at work or sweeping mail on September 22, 1998. The time of the injury was reported as late on September 21, 1998. The lateness of the injury could easily be construed as occurring late on September 21, 1998 or early on September 22, 1998. Additionally, the Office misinterpreted a September 7, 1998 annotation in appellant's medical report as relating to some type of preexisting injury when the context of the record indicates that it was in reference to the date of appellant's last menstrual period. Since the information supplied by appellant was essentially consistent and accurate, the Board finds that appellant established the first element, that the lifting or sweeping incident occurred at work on or about September 21, 1998.

Notwithstanding, appellant failed to meet the second element. The medical evidence of record is not to meet her burden of proof sufficient because there is no rationalized medical evidence from appellant's treating physician causally relating any injury to the accepted incident.

[8] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[9] *Id.* at 255-56.

[10] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[11] *James Mack*, 43 ECAB 321 (1991).

While Dr. Pondek provided some support for causal relationship in an October 7, 1998 referral form and in other reports referencing the employment incident, he did not provide an explanation of the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. Consequently, appellant has not established her claim, as she has submitted no medical evidence supporting that the employment incident caused or aggravated an injury.[12]

The decision of the Office of Workers' Compensation Programs dated November 17, 1998 is hereby affirmed as modified.

Dated, Washington, D.C.
August 8, 2000

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] Following the issuance of the Office's June 10, 1998 decision, the appellant submitted additional evidence. However, the Board may not consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).