U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA PILOSI and U.S. POSTAL SERVICE
POST OFFICE, Lehigh Valley, PA

Docket No. 99-2091 Submitted on the Record;
Issued December 1, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

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

On December 30, 1998 appellant, a 42-year-old postal clerk, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). She alleged that on December 29, 1998 she sustained an injury to her right knee when she tripped over the edge of a container and fell to the floor. Appellant did not stop work.

In a report dated January 5, 1999, appellant's physician, Dr. Ted Piotrowski, a family practitioner, noted that appellant was an employee of the employing establishment in for evaluation of right knee pain. Appellant indicated that, on December 29, 1998, while at work, she tripped and fell bumping both knees. Dr. Piotrowski diagnosed a probable contusion at the right knee with patellar tendon insertion.

In a report dated January 13, 1999, Dr. Piotrowski stated that appellant indicated that the accident really happened on December 21, 1998 but her employer told her to mark it down for December 29, 1998 since that was the date they filled out the report. He noted that appellant should consider speaking with her employer and try to amend the report to the correct date.

In a letter dated March 17, 1999, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish her claim and requested that she submit such. Appellant was advised that submitting a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment was crucial. She was allotted 30 days to submit the requested evidence.

In a February 2, 1999 report, Dr. J. Teig Port, Board-certified in orthopedic surgery, noted that appellant sustained a slip and fall at work on December 21, 1998 while sorting mail in one of the containers. Dr. Port reported that appellant developed pain primarily over the anterior

aspect of the right knee and had some low-grade symptoms. He diagnosed a resolving traumatic prepatellar bursitis of the right knee and noted that he did not see any evidence of internal knee derangement.

Appellant also supplied a January 4, 1999 progress report from Dr. Mary Bennie, a family practitioner, who noted that appellant was in for cholesterol and bilateral knee contusions. Dr. Bennie noted that appellant was complaining of pain in both knees after falling at work injuring her right knee. She also noted that appellant would go to the "[c]omp[ensation] doctor for the knee problem."

In a March 23, 1999 statement received by the Office on April 1, 1999, appellant stated that, on December 21, 1998, she was working at the city parcel break-down operation alone. The parcels were in a container that had a door cut into it. She opened the door and began distributing parcels. Appellant reported that, when she could no longer reach the parcels, she stepped into the container and finished throwing out the parcels until the container was empty. She indicated that, when she stepped out of the container, she tripped and fell landing on both knees. Appellant indicated that her hands and knees were stinging and burning from the fall and her knees were bruised. She provided the names of two witnesses, Brian Newberry and Ned Martin. Appellant indicated that she spoke to her supervisor, Raymond Wascavage and informed him that she would let him know if she required medical attention. She explained that the reason she did not seek immediate medical attention was because her initial impression was that the injury was not severe enough and she thought it would heal itself. However, appellant continued to experience pain and scheduled an appointment with her family physician. She indicated that her supervisor took her to Dr. Piotrowski on January 5, 1999. Appellant also explained that, on December 28, 1998, she felt she should file a report. She stated that, on December 30, 1998, her supervisor filled out the form and put December 29, 1998 as the date of occurrence. Appellant stated that she thought that management properly filled out the form. She indicated that nothing was explained to her nor was she asked to review the form for accuracy. Appellant stated that she was told where to sign and told that the supervisor would take care of the paperwork. She stated that she subsequently became aware that the listed date of occurrence was incorrect. Appellant immediately notified the union, and she was informed that the problem would be corrected. She also supplied a statement from Paula Mesaris, the Assistant Clerk, Craft Director for the American Postal Workers Union (APWU). Ms. Mesaris affirmed that appellant had notified her on the day after filing the claim that the date of injury was incorrect and that she had notified the supervisor of customer support, Mr. Schofield. She noted that she was assured that actions were taken to correct the matter.

In an April 14, 1999 statement, Mr. Schofield indicated that he remembered very little about the injury but vaguely remembered talking to Ms. Mesaris although he did not remember anything about the conversation.

In an April 20, 1999 statement, which was faxed to the Office, Mr. Wascavage stated that he was the individual who completed the CA-1 form. Mr. Wascavage indicated that, at the time he filled it out, appellant did not request medical attention, about a week later, she stated that she had some pain and discomfort and wanted to be checked. He recalled that he "thought" it was January 5, 1999 that she was taken for medical attention. Mr. Wascavage also indicated that it

was not until some time in February that he received a call from someone in the injury compensation department questioning the actual date of the incident that he realized it was incorrectly written on the form. He also clarified that, at the time he completed the CA-1 on December 30, 1998, he was led to believe that the accident occurred on the day before, December 29, 1998. Mr. Wascavage indicated at no time did he tell her the date of the accident had to be December 29, 1998.

In a February 10, 1999 memorandum to the record, the employing establishment's Human Resources Specialist, Denise Edmonds, noted that she had spoken to the supervisor Mr. Wascavage on February 10, 1999 and questioned him regarding the dates of December 21, 1998 as opposed to December 29, 1998. Ms. Edmonds inquired as to how the report was handled but indicated Mr. Wascavage did not remember all of the details of the accident. She indicated that she then called appellant and inquired into the specifics regarding her doctor appointments and why she had filled out the CA-1 form with the incorrect dates. Appellant informed her that she had not put the incorrect date, that it was a mix up, she had informed the supervisor and thought it was corrected and confirmed that she did not tell anyone to put in a wrong date that it was just a mix up. When questioned regarding her doctor appointments, she made a mistake concerning her first visit, however, she went to her locker and corrected herself by indicating that January 5, 1999 was the first time she went for a medical.

By decision dated April 20, 1999, the Office denied appellant's claim for the reason that "fact of an injury was not established," as it was not established that the claimed incident occurred on December 21, 1998 in the manner alleged.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on December 21, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of 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."[1] 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.[2]

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.

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

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

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[4] 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 her subsequent course of action.[5] 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.[6]

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.[7]

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.[8]

In the present case, the Board finds that appellant has met the first component.

Appellant contends that she sustained an injury on December 21, 1998 when she tripped over the edge of a container and fell to the floor. She stated that originally she did not believe that it was an injury of a serious nature and although her hands and knees were burning from the fall, she did not think the injury was serious enough to warrant medical attention and thought it would heal itself. Appellant subsequently indicated that it did not heal itself and continued to worsen such that she notified her immediate supervisor Mr. Wascavage on December 28, 1998. On December 30, 1998 her supervisor filled out the form and wrote the date of injury as December 29, 1998. Appellant confirmed she did not review the form for accuracy as she had no reason to question whether her supervisor correctly completed the form. She also supplied a

[3] *Elaine Pendleton, supra* note 1.

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

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

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

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

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

statement from a coworker, Ms. Mesaris, who noted that appellant did inform them that the date of injury needed to be corrected. In subsequent correspondence, the employing establishment controverted the claim based upon an incorrect date of injury as well as a mistake made by appellant with respect to dates of treatment which appellant corrected in the record. However, there was no disagreement that an incident occurred. The discrepancy is regarding December 21 or 29, 1999. Appellant has explained how the dates could be misconstrued as she originally thought her injury would heal on its own and she was initially unaware that an incorrect date was provided. The record establishes that appellant corrected her mistake as soon as she learned of its existence. None of these inconsistencies is enough to cast serious doubt on appellant's statements and thus the information supplied by appellant is sufficient to prove that the incident occurred at the time, place and in the manner alleged.

However, the Board finds that appellant has not established that she met the second component of fact of injury.

Appellant originally went to her family physician, Dr. Bennie, on January 4, 1999, who noted that appellant had bilateral knee contusions and noted that she was going to go to the compensation doctor for the knee problem. She subsequently saw Dr. Piotrowski on January 5, 1999. Dr. Bennie stated that the patient was an employee of the employing establishment for an evaluation of right knee pain. She indicated that appellant informed her that, on December 29, 1998 while at work, she tripped and fell bumping both knees. She was having significant pain in the right knee. Dr. Bennie diagnosed right knee pain with a probable contusion at the patellar tendon insertion. The notes did not express any specific opinion that the claimant's condition was causally related to the incident or medical rationale supporting such an opinion based upon a complete history.[9] She also submitted a January 13, 1999 report from Dr. Piotrowski. In his report, Dr. Piotrowski noted that the patient was doing a bit better and she is making some improvement. He also noted that appellant informed him that the accident really happened on December 21, 1999 but her employer told her to mark it down for December 29, 1999 since that is when they filed the report. Dr. Piotrowski explained to her that they should amend this to the correct date of December 21, 1999.[10] He concluded his examination by noting that appellant's condition would resolve itself in a matter of time but he did not offer any type of a definite opinion regarding whether the December 21, 1998 incident caused an injury or rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. In a February 2, 1999 report, Dr. Port noted that appellant injured herself at work but he did not offer any type of rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. Consequently, appellant's medical records failed to state that there was a causal relationship between the diagnosed condition and the employment incident of December 21, 1998. As appellant has not submitted the requisite medical evidence needed to establish her claim, she has failed to meet her burden of proof.

[9] *Arlonia B. Taylor*, 44 ECAB 591 (1993).

[10] Appellant has repeatedly stated that the date was December 21, 1999.

For the above-noted reasons, appellant has not established that she sustained an injury in the performance of duty on December 21, 1998.[11]

The decision of the Office of Workers' Compensation Programs dated April 20, 1999 is affirmed as modified.

Dated, Washington, DC
December 1, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Member

[11] The Board notes that subsequent to the Office's April 20, 1999 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).