U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LESA D. SITZMAN and DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Kansas City, MO

Docket No. 97-1750; Submitted on the Record;
Issued January 10, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury on July 5, 1995, causally related to factors of her federal employment.

On July 17, 1995 appellant, then a 36-year-old receptionist, filed a claim alleging that she sustained a cut on the top of the left foot and a bruise on the left arm on July 5, 1995 when a file cabinet fell over and pinned her between it and a mailbox. A witness stated that she heard the file cabinet fall and saw a cut on appellant's foot. Appellant stopped work on July 6, 1995 and returned on July 10, 1995.

In support of her claim appellant submitted a health status certificate from Dr. Stephen E. Dorsch, a Board-certified family practitioner, which noted that she had been under his care from July 6 to July 9, 1995 and that she was released to return to work. A July 6, 1995 left wrist and left humerus radiographic evaluation was reported as being normal, revealing no significant deformity, fracture or dislocation.

In a report dated February 13, 1996, Dr. Dorsch noted that appellant sustained an injury to her left shoulder, left arm and left wrist as well as a laceration of the dorsum of the left foot, on July 5, 1995 when a file cabinet fell over on her. He noted that following the injury appellant had been seen in the emergency room and had received a tetanus shot.[1] Dr. Dorsch noted that since that time appellant had continued to have left shoulder, left arm and left wrist symptoms which he felt were related to the file cabinet incident.

On March 1, 1996 appellant filed a claim for recurrence of injury alleging that she was unable to lift charts due to pain in her neck, back and arm. She claimed that her problems had been continuous since the July 5, 1995 accident.

[1] However, no "emergency room" records were submitted.

In a March 4, 1996 report, Dr. Greg Bliss, a Board-certified orthopedic surgeon, noted that appellant claimed an injury on July 5, 1995 and that she had gotten no better since that time. Dr. Bliss noted that appellant complained of neck and left shoulder pain and he opined that she had a lesion of her left shoulder with a labral or capsular tear causing pain and instability. An accompanying history and physical reported appellant's version of her "left upper extremity and shoulder" injury but noted that it happened quickly and she was not sure of the exact mechanism of injury, such that she thought that her arm was somewhat pinned or pushed posteriorly.

By decision dated June 10, 1996, the Office of Workers' Compensation Programs rejected appellant's traumatic injury claim finding that the evidence of record failed to establish that an injury was sustained as alleged. The Office also issued a decision on that date denying appellant's recurrence claim. The Office found that appellant had failed to submit any contemporaneous medical evidence supporting the fact of injury and failed to submit evidence which contained a history of injury or a diagnosis of any resulting condition. The Office noted that Dr. Dorsch's return to work certificate contained no diagnosis or description of injury.

Appellant requested reconsideration, and in support she submitted multiple medical reports and records. Records predating the date of injury demonstrated that on February 2, 1994 appellant was seen for a long history of intermittent back pain and was diagnosed with musculoskeletal neck and back pain, and that appellant fell on November 3, 1994, landed on her bottom and experienced neck pain from that point on.

A July 5, 1995 employing establishment employee health clinic note indicated that a metal cabinet fell over and struck appellant's left arm and pinned her arm against another cabinet for about 30 seconds.[2] The clinic note indicated that a candy dish also fell and a piece of glass cut appellant's dorsal left foot, and that a small piece of glass was extracted. The clinic noted that appellant had a left arm abrasion, but had good range of left elbow motion, and that radial and ulnar pulses were good. Diagnoses were noted as contusion and abrasion of left upper arm and a superficial laceration of the left foot.

A July 6, 1995 radiographic evaluation was reported as showing a normal left wrist and left humerus without evidence of deformity, fracture or dislocation.

A July 6, 1995 medical progress note from Dr. Dorsch indicated that appellant presented complaining of left arm pain, left wrist pain, and a laceration of the dorsum of the left foot which occurred on July 5, 1995 when a file cabinet fell on her. Dr. Dorsch noted good range of left arm motion without weakness, but also noted an area of abrasion near the distal humerus and some edema and mild ecchymoses in the area of the wrist. He noted a superficial laceration over the dorsal left foot with minimal surrounding erythema. Dr. Dorsch noted that appellant also complained of some lower back pain with some paravertebral spasms. He diagnosed left arm contusion, left wrist sprain, left foot laceration and muscular ligamentous back strain.

A July 13, 1995 note from Dr. Dorsch indicated that appellant was seen for follow-up of her left arm and wrist symptoms secondary to having a file cabinet fall on her. He noted that

[2] This was the source of the "emergency" treatment appellant received on the date of injury.

appellant had good range of motion of the left wrist and minimal discomfort of the left elbow, but had some ecchymoses over the distal humerus distribution near the elbow with some tenderness to palpation and with some palpable subcuticular hematomas. Dr. Dorsch also noted that appellant had some back pain which was improving, and he diagnosed left arm, left wrist contusion and strain, resolving at this time and musculoligamentous back pain.

A July 31,1995 medical progress note from Dr. Dorsch indicated that appellant was doing well at that time, that she had a history of left arm, left wrist strain and still had some discomfort around the elbow and some back pain, but was overall doing fairly well with these. Dr. Dorsch diagnosed "history of back pain, left arm, left wrist strain, resolving at this time although still persisting."

A November 22, 1995 medical progress note from Dr. Dorsch indicated that appellant fell about a month earlier at Blue Ridge Mall which seemed to exacerbate some of her symptoms. He noted that she complained of headache, neck pain, left arm pain, and back pain, had good range of motion of the upper extremities without weakness or neurological deficits, and had tenderness to palpation of the posterior neck and trapezius. Dr. Dorsch diagnosed "left arm pain and questionable etiology, probably representing a tendinitis, bursitis, muscular ligament[ous] strain of the arm involving both the elbow and the shoulder secondary to initially having a file cabinet fall on her and then a month ago she had fallen, associated headache, [and] muscular ligament[ous] neck pain."

A November 29, 1995 medical progress note from the employing establishment employee health clinic indicated that appellant was complaining of left chest wall pain which began suddenly one week earlier. The clinic noted that appellant had fallen at a shopping mall in August 1995 and struck her left distal triceps area on the floor. Probable bicipital tendinitis and left distal triceps tenderness was diagnosed. A November 29, 1995 medical progress note from Dr. Dorsch indicated that appellant had some left arm and left elbow pain and some chest wall pain anteriorly. Dr. Dorsch noted that appellant had tenderness to palpation of the neck and upper trapezius, greater on the left than on the right, and had discomfort with range of motion of the left upper extremity. Dr. Dorsch diagnosed "probable pleuritic chest wall pain, history of trauma secondary to a fall recently and having had a cabinet fall on her earlier in the summer around July with resultant shoulder contusion and neck strain with probable upper extremity symptoms related to this as well." A November 29, 1995 chest x-ray was reported as being normal.

A December 4, 1995 medical progress note from Dr. Dorsch indicated that appellant had tenderness to palpation over the left posterior neck and left upper trapezius muscle. Musculoligamentous neck strain with left upper trapezius muscle strain, left shoulder strain and left breast pain of questionable etiology, status post augmentation mammoplasty were diagnosed.

A December 6, 1995 magnetic resonance imaging (MRI) scan of appellant's cervical spine was reported as being negative.

A December 7, 1995 radiographic evaluation of appellant's chest, rib cage and left humerus, including the left elbow and shoulder was reported as demonstrating negative examinations without bony destruction, reaction or arthritic change.

Appellant submitted a December 8, 1995 report from Dr. Dorsch which indicated that appellant was concerned about her left-sided chest discomfort and wondered if she had silicone leakage from her breast implants. Left shoulder and arm symptoms were also noted. Diagnoses were noted as left breast, chest wall pain, possibly representing costochondritis, possible secondary to contusion from July 1995 work injury, left arm pain, also secondary to her falls, costochondritis versus possible pleuritic chest wall pain, history of augmentation mammoplasty.

An April 10, 1996 report from Dr. Bliss noted that appellant had tenderness in the suprascapular region, the posterior glenohumeral area, around the distal triceps insertion, around the elbow and on the left forearm extensor mass, and had pain with left wrist extension. He diagnosed left shoulder strain and elbow strain with lateral epicondylitis. Causation was not discussed.

A May 3, 1996 report from Dr. Bliss noted that he saw appellant for left shoulder pain which occurred the preceding day when she was trying to tuck her shirt in with her left arm. He diagnosed possible internal derangement of the left shoulder with possible ligament or labral tear. No relationship with a July 5, 1995 injury was identified.

A June 26, 1996 MRI of the left shoulder was reported as demonstrating a fracture, possibly subacute, of the proximal humerus at the region of the surgical neck, with bone marrow edema and bone contusion in that region. Appellant's history was noted as "injury July 1995 with reinjury May 1996 – pain posterior and superior aspect of the shoulder with abnormal decreased range of motion."

A June 28, 1996 report from Dr. Bliss noted that appellant was having continued pain after her shoulder injury almost a year before. He noted that she had a recurrence and exacerbation of her discomfort when she tucked in her shirt, and he diagnosed "left shoulder pain probably due to a slowly healing stress fracture from her initial injury with a file cabinet approx[imately] one year ago."

A July 14, 1996 form report from Dr. Bliss noted the date of injury as May 3, 1996, diagnosed "left shoulder pain probably due to a slowly healing stress fracture," and answered "yes" to the question of whether the accident referred to was the only cause of appellant's condition. He indicated that appellant was working.

An August 9, 1996 report from Dr. Bliss noted that appellant had an exacerbation of shoulder discomfort after playing softball two weeks previously. He diagnosed "status post proximal humerus bone contusion and shoulder strain, healing."

An August 28, 1996 form report from Dr. Bliss addressed findings due to a May 3, 1996 injury. He diagnosed "status post left proximal humerus bone contusion and shoulder strain -- healing," and noted that appellant was working.

On November 24, 1996 an Office medical adviser noted that the record failed to reveal any complaints of left shoulder pain until after appellant's fall at the mall, after raking and cutting grass and after tucking her shirt in with her left hand in May 1996. The medical adviser

also noted that no physician of record explained how a proximal (around the shoulder) humeral fracture would be related to a distal (around the elbow) humeral contusion injury a year before.

By decision dated October 30, 1996, the Office denied modification of the June 10, 1996 decision finding that the evidence submitted in support was insufficient to warrant modification. The Office found that a medical condition resulting from the file cabinet falling on appellant was not established.

The Board finds that the evidence of record supports that appellant sustained a laceration on the dorsum of her left foot and contusions and abrasions of the left distal humerus and wrist areas on July 5, 1995 when a file cabinet fell on her.

The record supports that appellant sought emergency treatment immediately following the incident on July 5, 1995 at the employee health clinic of the employing establishment. The records from this treatment clearly indicate that appellant sustained a dorsal left foot laceration from a piece of broken glass, part of which was even extracted from her foot by the employee health clinic. This record also supports the occurrence of a left arm contusion and abrasion.

The next day appellant saw her own treating physician, Dr. Dorsch, who clarified that appellant presented objectively with an area of abrasion near the distal humerus and some edema and ecchymosis in the wrist area, and with corresponding subjective complaints of left arm and left wrist pain, which he attributed to the July 5, 1995 file cabinet falling on her. He also reconfirmed the presence of the left foot dorsal laceration.

The Board finds that these contemporaneous medical reports substantiate that appellant sustained a left foot laceration, left wrist contusion and left distal humerus abrasion in the elbow area on July 5, 1995 as alleged. These contemporaneous reports however, do not support that appellant sustained any other injury at that time, including but not limited to back or neck musculoligamentous strain, shoulder strain, or a proximal humerus shoulder area stress fracture.

Although Dr. Dorsch mentioned in his July 6, 1995 report that appellant complained of some lower back pain, he did not relate the occurrence of this pain, which he diagnosed as musculoligamentous back strain, to the July 5, 1995 file cabinet falling on appellant's left arm, nor did he explain how a file cabinet trapping and contusing appellant's left arm for about 30 seconds could result in lower back strain. Consequently, Dr. Dorsch's July 6, 1995 contemporaneous report is insufficient to establish that the file cabinet falling incident caused appellant's diagnosed low back strain. This is the case particularly since appellant's pre-July 5, 1995 medical records support that she had had multiple previous incidents of intermittent musculoligamentous low back pain and neck pain and had additionally sustained previous falls.

On July 13, 1995 Dr. Dorsch saw appellant as a follow-up for her left arm and left wrist pain, and he noted continuing ecchymosis over the left distal humerus near the elbow and palpable subcuticular hematomas. On July 31, 1995 Dr. Dorsch indicated that appellant was doing well with some remaining discomfort around the elbow. Thereafter appellant had no further medical follow-up for her left upper extremity injuries until after a fall at a mall, an intervening circumstance, which produced subjective complaints on November 22, 1995 of headache, neck pain, back pain and left arm pain of "questionable etiology, probably

representing a tendinitis, bursitis, muscular ligament[ous] of the arm involving both the elbow and the shoulder." Although Dr. Dorsch referred to these new symptoms as being due, in part, to having the file cabinet fall on her, he did not explain how or why this relationship existed when the original injury did not involve headache, neck injury, back injury, or musculoligamentous left arm strain[3] or shoulder strain injury. Consequently, Dr. Dorsch's November 22, 1995 medical progress note is insufficient to establish that any of appellant's symptoms on that date were due to the July 5, 1995 left wrist and elbow injuries.

Additionally, a November 29, 1995 employing establishment health clinic note supported that when appellant fell at the mall she struck her distal triceps area on the floor, resulting in probable bicipital tendinitis and left distal triceps tenderness, which is consistent with her subjective left arm complaints reported by Dr. Dorsch on November 22, 1995. Another new complaint noted November 29, 1995 was anterior left chest wall pain, but no explanation was presented which supported that this pain was causally related to the July 5, 1995 incident. On that date Dr. Dorsch also claimed that the file cabinet falling on appellant caused neck strain and shoulder contusion, which was not supported by the more contemporaneous records. As he provided no rationale as to how neck strain and a shoulder contusion not diagnosed until November 22, 1995 were related to left lower arm contusions and abraisions sustained on July 5, 1995, or to the file cabinet falling against and trapping appellant's left lower arm for 30 seconds that date, this report is insufficient to establish that appellant sustained neck or shoulder injury on July 5, 1995.

A December 4, 1995 report from Dr. Dorsch provided no further explanation of this relationship, nor of the relationship between appellant's then diagnosed musculoligamentous neck strain, left upper trapezius strain or left shoulder strain and appellant's July 5, 1995 left arm entrapment injuries. Consequently this report does not establish any further injury due to the accepted July 5, 1995 employment incident, beyond the accepted left wrist and distal humerus contusions and abrasions. A December 7, 1995 radiographic evaluation which included appellant's left elbow, left humerus and shoulder, was reported as being negative.

On December 8, 1995 Dr. Dorsch noted appellant's complaints of left-sided chest pain and diagnosed left breast, left chest wall pain possibly representing costochondritis, possibly secondary, in part, to the July 5, 1995 left arm 30-second entrapment contusion and abrasion injury. He did not, however, explain how such pain not diagnosed until November 29, 1995 could pathophysiologically be related to the July 5, 1995 arm entrapment injury, especially when the reports most contemporaneous to the July 5, 1995 injury made no mention of chest contact, chest wall pain or chest compression. Dr. Dorsch also did not discuss how this relationship could exist despite an intervening fall and the presence of problems surrounding the augmentation of appellant's breasts. Consequently, this report is insufficient to establish causal relation.

[3] The records support that the left arm injuries of July 5, 1995 were limited to contusion and abrasion injuries with ecchymosis and subcuticular hematomas. No shoulder, upper arm or left elbow tendinitis, bursitis, or musculoligamentous strain injuries were identified.

Thereafter appellant filed a claim for a recurrence of disability, causally related to her July 5, 1995 injuries. These injuries were accepted only for left foot laceration, left wrist contusion and left distal humerus abrasion in the elbow area.

In both April and May 1996 Dr. Bliss reported that appellant was complaining of left shoulder symptomatology in addition to left elbow, forearm and wrist pain. He diagnosed left shoulder strain, possible internal derangement with ligament tear, and left elbow strain with epicondylitis, but he failed to discuss causation or to relate these diagnosed conditions to the July 5, 1995 incident or to the accepted left lower arm contusion and abrasion injuries. Consequently, these reports do not support a March 1, 1996 recurrence of disability, causally related to the July 5, 1995 employment injuries.

Dr. Bliss thereafter reported that appellant sustained a left shoulder injury on May 3, 1996[4] when she tucked in a shirt using her left arm. From that point on he referred to appellant's diagnoses as being causally related to this May 3, 1996 injury.

A June 26, 1996 MRI demonstrated a subacute fracture of the proximal humerus with bone marrow edema and regional bone contusion. However, no causal relation with the accepted employment injuries or the July 5, 1995 incident was identified. Thereafter on June 28, 1996 Dr. Bliss indicated that appellant's continued shoulder pain was "probably due to a slowly healing stress fracture from her initial injury with a file cabinet," however, he did not explain how the file cabinet entrapment injury of appellant's left lower arm or her left wrist and elbow contusions and abrasions, caused a proximal stress fracture of the humerus in the shoulder area, nor did he explain how the stress fracture diagnosed on June 26, 1996 could be related to the July 5, 1995 incident when radiographic evaluation on December 7, 1995 demonstrated a negative left humerus and shoulder. Therefore, Dr. Bliss's reports are insufficient to establish that appellant's July 5, 1995 incident caused a left proximal humerus stress fracture diagnosed nearly a year later, and are insufficient to establish a recurrence of disability on March 1, 1996, causally related to the accepted left wrist and elbow contusions and abrasions. Thereafter Dr. Bliss related appellant's symptoms of proximal bone contusion and shoulder strain to the May 3, 1996 incident, and not due to the accepted employment injuries. He also noted that these symptoms were aggravated by appellant's soft ball playing, an intervening circumstance, and noted that she was still working. These reports, therefore, also do not support that appellant sustained a recurrence of disability on March 1, 1996, causally related to her July 5, 1995 accepted injuries

As used in the Federal Employees' Compensation Act,[5] the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at

[4] Actually Dr. Bliss's May 3, 1996 report states that the injury occurred the day preceding May 3, 1996.

[5] 5 U.S.C. §§ 8101-8193.

the time of injury.[6] An individual who claims a recurrence of disability due to an accepted employment injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury. This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.[7] Causal relationship is a medical issue and can be established only by medical evidence.[8] As no such medical evidence was submitted, appellant has not that burden in this case.

The Board therefore finds that appellant has submitted insufficient evidence to establish that on March 1, 1996 she sustained a recurrence of disability causally related to the accepted conditions of left foot laceration, left wrist contusions or left distal humerus contusions and abrasions.

As the evidence of record supports that appellant sustained a left foot laceration, left wrist contusions and left distal humerus contusions and abrasions on July 5, 1995 in the performance of duty, these conditions are accepted as being employment related. However, the evidence of record is insufficient to establish that appellant sustained headaches, neck pain, back pain, shoulder strain, a proximal humerus stress fracture, or left chest wall pain, causally related to the July 5, 1995 incident, these conditions are not accepted as being employment related, and any disability due to these conditions, or medical treatment for these conditions are not compensable. Additionally, none of the medical evidence submitted supports a recurrence of disability commencing March 1, 1996, causally related to appellant's accepted employment injuries.

[6] *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17). Disability is not synonymous with physical impairment. An employee who has a physical impairment, even a severe one, but who has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to disability compensation; *see Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that appellant had sustained a permanent impairment of his legs because of thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury). *Cf.* 5 U.S.C. § 8107 (entitlement to schedule compensation for loss or permanent impairment of specified members of the body).

[7] *Stephen T. Perkins*, 40 ECAB 1193 (1989); *Dennis E. Twardzik*, 34 ECAB 536 (1983); *Max Grossman*, 8 ECAB 508 (1956); 20 C.F.R. § 10.121(a).

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

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 10, 1996 is hereby set aside and appellant's claim is accepted for left foot laceration, left wrist contusion and left distal humerus contusion and abrasion, and the decision of the Office dated October 30, 1996 is set aside in part for the same reason but is affirmed in part insofar as it denied appellant's recurrence claim.

Dated, Washington, D.C.
January 10, 2000

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member