

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VILMA C. LEHMAN and DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH, Bethesda, MD

*Docket No. 99-1130; Submitted on the Record;
Issued July 6, 2000*

DECISION and ORDER

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

The issue is whether appellant established that she sustained an injury on October 26, 1998 while in the performance of duty.

On October 30, 1998 appellant, then a 40-year-old program assistant, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that she sustained injuries to her cervical area, back, shoulders and arms while in the performance of duty on October 26, 1998. She explained that she experienced sharp pain in the above-noted areas while removing files, binders and notebooks from their respective drawers and shelves and while packing supplies into boxes. Appellant ceased working on October 27, 1998. In support of her claim, appellant submitted treatment records dated October 20, 27 and 28, 1998 from Kaiser Permanente indicating that she received treatment for neck pain and cervical strain on those respective dates. Additionally, the employing establishment provided progress notes from its occupational medical service unit covering the period October 28 through 30, 1998.

On January 6, 1999 the Office of Workers' Compensation Programs advised appellant of the need for additional medical and factual information. The Office specifically noted that the records from Kaiser Permanente referred to job-related injuries on June 16 and July 23, 1998, and did not include a history of injury on October 26, 1998. In a response dated January 9, 1999, appellant explained that she had previously sustained a cervical strain, but that her recent complaints of back, shoulder and arm pain were the result of her October 26, 1998 employment injury. The Office also received additional treatment and progress notes from both Kaiser Permanente and the occupational medical service unit.

By decision dated February 10, 1999, the Office denied compensation on the basis that appellant failed to establish that her claimed condition was caused by the alleged injury of October 26, 1998.

The Board finds that appellant failed to establish that she sustained an injury while in the performance of duty on October 26, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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,² that the claim was timely filed under the Act,³ that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is being claimed is causally related to the employment injury.⁴

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.⁵ Causal relationship must be established by rationalized medical opinion 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 physician's opinion must be based on a complete factual and medical background of the claimant, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.⁶

In the instant case, the record does not include any rationalized medical opinion evidence establishing a causal relationship between appellant's claimed condition and her alleged employment injury of October 26, 1998. The earliest records from Kaiser Permanente, dated October 27, 1998, note a history of injury on June 19 and July 23, 1998, and do not mention appellant's alleged employment injury of October 26, 1998. As such, these reports are clearly insufficient to establish a causal relationship between appellant's claimed condition and her alleged injury of October 26, 1998.

The first reference to appellant's alleged October 26, 1998 injury appears in the October 28, 1998 treatment note from Kaiser Permanente. This report notes that appellant was treated for neck pain and cervical strain "possibly related to packing boxes at work [on October 26, 1998]." Additionally, the report indicates that appellant sustained job injuries on

¹ 5 U.S.C. §§ 8101-8193.

² 5 U.S.C. § 8101(1); *see James A. Lynch*, 32 ECAB 216 (1980).

³ 5 U.S.C. § 8122.

⁴ *See Melinda C. Epperly*, 45 ECAB 196 (1993); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Id.*

⁶ *Id.*

June 19 and July 23, 1998. The October 28, 1998 treatment note is equivocal, and thus, insufficient to satisfy appellant's burden.⁷

The two most recent reports from Kaiser Permanente, dated November 17 and 19, 1998, indicate that appellant received treatment for low back pain. These reports also note a history of injury on June 19, July 23 and October 26, 1998. Although the November 17 and 19, 1998 treatment notes from Kaiser Permanente refer to an injury on October 26, 1998, they provide no detail regarding the injury. The lack of specific detail regarding the mechanism of appellant's alleged injury on October 26, 1998 clearly undermines the probative value of the treatment notes from Kaiser Permanente.

The progress notes from the occupational medical service unit are similarly insufficient to satisfy unit appellant's burden inasmuch as they do not offer an opinion regarding the cause of appellant's claimed condition. This evidence primarily chronicles appellant's visits to the health unit for the purpose of providing information and documentation regarding her work absences and restrictions imposed by her treating physician.

Inasmuch as appellant failed to submit rationalized medical opinion evidence on the issue of whether there is a causal relationship between her claimed condition and her employment, the Office properly denied appellant's claim for compensation.

The February 10, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
July 6, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁷ *Norman E. Underwood*, 43 ECAB 719 (1992).