U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERA WICKS and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

Docket No. 99-2429; Submitted on the Record;
Issued November 15, 2000

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

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

On February 24, 1999 appellant, then a 53-year-old regular mailhandler, filed a traumatic injury claim (Form CA-1) alleging that on February 22, 1999 she "injured her right shoulder while working." She alleged that she sustained degenerative joint disease and a rotator cuff injury. Joan Jennings, appellant's supervisor, noted on the CA-1 form that the employing establishment controverted appellant's claim and stated that "the doctor's statement do[es] not say it was [an] on[-the-job] injury." She indicated that appellant first sought medical attention on January 17, 1999.

In support of her claim, appellant submitted a medical note dated February 26, 1999 from Dr. Chandra S. Anand, Board-certified in internal medicine, who noted that appellant was incapacitated from January 17 to February 22, 1999, diagnosed degenerative joint disease and a rotator cuff injury, and restricted appellant to light duty with no prolonged sitting or standing for more than one hour and no lifting of more than five pounds from February 22 through September 1, 1999.

By letter dated March 23, 1999, the Office of Workers' Compensation Programs advised appellant and the employing establishment that additional information was required. The Office provided appellant a detailed list of questions and requested that she respond within 30 days.

In response appellant stated that her injury occurred when "I was lifting overloaded BBM tubs and letter trays on spiral #6 and placing them in BMC or APC container[s]." Appellant added that she mentioned her pain to her supervisor before she knew how severe it was and that this was also the reason for her delay in seeking medical attention. She stated that she was having pain in her right hand and arm and took Advil and applied heat to alleviate the pain. Appellant stated that she visited Dr. Anand on January 15, 1999 because she could not sleep at night or move her arm.

Dr. Anand, appellant's attending physician, opined that appellant had severe pain upon movement of the shoulder and that she had a rotator cuff injury. He check the box marked "yes" that he believed appellant's condition was caused or aggravated by an employment activity. He prescribed Robaxin and Motrin. Dr. Anand stated:

> "[Appellant] can return to work on September 2, 1999 -- even though she can go to work she will not be able to do her regular duty due to the evidence of injury. She has the rotator cuff injury and a recurrent injury. No lifting more than five pounds."

By decision dated April 29, 1999, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that she experienced the claimed employment factor at the time, place and in the manner alleged.

The Board finds that appellant has 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 Unites 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.[1] These are the essential elements of each and every compensation claim regardless of whether the claim is predicted upon a traumatic injury or an occupational disease.[2]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[4] The medical evidence required to establish causal relationship is usually rationalized medical 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 nature of

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

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

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

[4] *Id*. For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5]

Initially, the Board finds that there are no serious inconsistencies in the record to dispute appellant's claim that she was lifting heavy items on February 22, 1999 and later developed right shoulder pain. Dr. Anand's report verifies that appellant sought treatment for her shoulder pain on February 26, 1999, four days after the alleged lifting activity and was diagnosed with a rotator cuff injury. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.[6] The fact that appellant may have experienced shoulder pain prior to the alleged employment incident or that she may have had a preexisting shoulder injury does not preclude the occurrence of a subsequent employment injury.[7] Therefore, the Board finds that appellant did experience the lifting activity on February 22, 1999 as alleged.

Although appellant filed a traumatic injury claim, she noted that over a period of time she had been complaining of pain in her shoulder due to lifting the overload tubs and trays at work. Since appellant had cited work factors over a period of time as the cause of her condition, her claim is more accurately categorized as an occupational disease claim instead of a traumatic injury claim.[8]

Notwithstanding, the Board also finds that appellant failed to submit rationalized medical opinion evidence to establish that her rotator cuff injury is causally related to the February 22, 1999 work incident or factors of her employment. While Dr. Anand noted that appellant's degenerative joint disease and rotator cuff injury began in January 1999 and attributed her conditions to work factors, he did not address the nature of appellant's rotator cuff injury or explain how it incapacitated appellant for work. Dr. Anand indicated work restrictions for appellant, but did not opine whether appellant's degenerative joint disease was attributed to or aggravated by her work activities.

Despite being advised by the Office of the deficiencies in her medical evidence, appellant failed to submit a rationalized opinion addressing the issue of causal relationship and consequently failed to meet her burden of proof. Other factual and medical evidence submitted

[5] *Id*.

[6] *Id*.

[7] The employing establishment stated that appellant returned to work on February 22, 1999 and notified them that she had been having shoulder pain three months prior. Appellant, however, explained that she was unaware of the severity of her injury until she was notified of Dr. Anand's findings on January 15, 1999 and filed a claim for compensation on February 24, 1999.

[8] The primary difference between a traumatic injury and an occupational disease is that a traumatic injury must occur within a single work shift while an occupational disease occurs over more than one work shift, *see* 20 C.F.R. § 10.5(a)(14-16); 20 C.F.R. § 10.20.

by appellant was too vague and speculative and of diminished probative value. Accordingly, the Office properly denied the claim.[9]

The decision of the Office of Workers' Compensation Programs dated April 29, 1999 is hereby affirmed.

Dated, Washington, DC
November 15, 2000

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[9] The Board's review on appeal is limited to the evidence that was before the Office at the time it issued its final *decision*. 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). The June 30, 1999 medical report submitted by appellant on appeal was not in the record when the Office issued its April 29, 1999 decision; therefore, the Board cannot review this evidence.