U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TANYA R. CLIFTON and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Charlotte, NC

Docket No. 99-2164; Submitted on the Record;
Issued October 26, 2000

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained an injury in the performance of duty on October 27, 1997.

On October 27, 1997 appellant, then a 24-year-old mail processor, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she injured a disc in her lower back while feeding the processing machine and picking up trays of mail.

In an October 27, 1997 duty status report (CA-17), an emergency room physician[1] diagnosed exacerbation of chronic sciatica due to appellant's lifting trays and feeding barcodes at work. It was indicated that appellant could return to work with restrictions.

On January 13, 1998 the Office informed appellant that she needed to submit a physician's opinion explaining how appellant's injury was caused or aggravated by her employment.

In response to the Office's letter, appellant submitted progress notes dated October 27, 1998,[2] in which Dr. Aiken noted that appellant had been taken off light duty and placed on full duty where she was required to do a lot of repetitive lifting, stooping and bending. A computerized tomography scan revealed "a dysbulge on the right at L4-L5" and the diagnosis was "[d]ysbulge reoccurrence (sic) probably secondary to repetitive motion."

[1] The physician's signature on this report is illegible.

[2] These notes were written by Joseph J. Bartoszek, Jr., P.A. and signed by both Mr. Bartouzek and Dr. Janet Aiken, appellant's attending physician and a Board-certified internist.

In a report dated November 10, 1997, Dr. Steven K. Gudeman, a Board-certified neurological surgeon, noted that appellant was referred for an evaluation of her "low back/right leg pain suggestive of right L5 radiculopathy secondary to a herniated right L4-5 disc, refractory to aggressive nonsurgical management." As to the history of the injury, Dr. Gudeman stated:

> "According to her, this began in early August when she fell at work, and it was then exacerbated while putting her 1½-year-old nephew down she noted increased low back/right leg pain. Attempt at physical therapy improved her discomfort and she returned to work for 1½ weeks with increasing pain in the low back/right leg noted."

In conclusion, Dr. Gudeman diagnosed "[a]cute low back/right leg pain with right L5 radiculopathy secondary to a herniated right disc L4-5 disc" with nerve impingement and recommended surgery.

In operative notes dated November 25, 1997, Dr. Gudeman reiterated the history of the injury as appellant having low back and right leg pain subsequent to a fall at work in August which was exacerbated when she lifted her nephew.

In a memorandum to file dated February 10, 1998, the Office medical adviser indicated that the record contained four different versions of the injury and that the medical evidence was insufficient to establish causal relationship.

By decision dated February 18, 1998, the Office denied appellant's claim on the basis that she had failed to establish that her disability was caused by her employment.

In an attending physician's form (Form CA-20) dated December 22, 1997 and received by the Office on February 20, 1998, Dr. Gudeman diagnosed L5 radiculopathy secondary to herniated right L4-5 disc, noted that appellant had fallen at work in early August and then was reinjured in October and checked "yes" that the condition was caused or aggravated by an employment activity.

In an undated letter, which was received by the Office on March 29, 1998, appellant requested an oral hearing.

A hearing was held on January 29, 1999 at which appellant testified and submitted evidence which included progress notes for the period August 14, 1997 through February 12, 1998, disability slips and statements supporting that she sustained an employment injury on October 27, 1997.

In progress notes dated October 30, 1997, Dr. Aiken diagnosed back pain and stated that appellant's visit was due to a reinjury of her back at work and that appellant "[s]uddenly had back go out while working this weekend."

In a January 15, 1998 letter, Mr. Bartoszek, a physician's assistant, noted the history of appellant's employment injury which was due to returning to full duty from light-duty work and

opined that appellant's "increased pain is mostly likely due to repetitive motion and lifting after being placed back on full duty which further aggravated her disc herniation."

By decision dated March 26, 1999, the Office hearing representative affirmed the February 18, 1998 decision.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of work on October 27, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing the essential elements of his or her claim[4] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[5] that the claim was timely filed within the applicable time limitation period of the Act,[6] 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.[7] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[8]

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 evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[9] 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.[10]

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.[11] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant and her medical history, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion.

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[3] 5 U.S.C. §§ 8101-8193.

[4] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[5] *Id.*

[6] 5 U.S.C. § 8122.

[7] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[8] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[10] *Id.*

[11] *Donald W. Long*, 41 ECAB 142 (1989).

In this case, none of the medical evidence submitted by appellant is sufficient to establish that her disc herniation was caused or aggravated by her October 27, 1997 employment injury. Appellant submitted a report dated January 15, 1998 from a physician's assistant stating that her disc herniation was caused by returning to full-duty work on October 27, 1997 which required repetitive movement. However, a physician's assistant is not a "physician" within the meaning of the Act and therefore not competent to give a medical opinion.[12]

Dr. Gudeman's reports are insufficient to establish that appellant's disc herniation was caused or aggravated by her October 27, 1997 employment injury because he attributed appellant's injury to a fall at work in August, which was later exacerbated by lifting her nephew. Further, an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal relationship.[13]

The decision of the Office of Workers' Compensation Programs dated March 26, 1999 is hereby affirmed.

Dated, Washington, DC
October 26, 2000

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[12] *See Diane Williams*, 47 ECAB 613 (1996); *Shelia A. Johnson*, 46 ECAB 323 (1994); *Shelia Arbour (Victor E. Arbour)*, 43 ECAB 779 (1992).

[13] *Ruth S. Johnson*, 46 ECAB 237 (1994); *Lucrecia M. Nielsen*, 42 ECAB 583, 594 (1991).