

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERTHA M. AMBLER and DEPARTMENT OF JUSTICE,
BUREAU OF PRISONS, Atlanta, GA

*Docket No. 99-2381; Submitted on the Record;
Issued September 13, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant carried her burden of proof in establishing that she sustained an injury on June 10, 1998 in the performance of duty.

On June 16, 1998 appellant, then a 44-year-old correctional counselor, filed a notice of traumatic injury and claim for compensation alleging that on June 10, 1998 while attempting to stand up from a staff table in the prison dining room she experienced severe back pain. Appellant indicated that she sought medical treatment the next day with Dr. Tomaro Brown, an internist. She did not stop work following her alleged injury.

On August 10, 1998 the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish her claim.

In a Form (CA-16) authorization for medical treatment dated June 10, 1998, a physician, whose signature is illegible, and received by the Office on August 21, 1998 noted that appellant "went to stand up at mainline and experienced low back pain." On the reverse side of the form, Dr. Brown noted that appellant experienced onset of low back pain after standing from a sitting position. He noted physical findings and diagnosed a lumbar strain. The physician further noted that appellant's condition was not caused or aggravated by an employment activity. Dr. Brown approved appellant for regular work effective June 12, 1998.

In a decision dated October 9, 1998, the Office denied appellant's claim for compensation on the grounds that she failed to establish fact of injury.

In a letter dated December 5, 1998, appellant requested reconsideration. She explained in her letter that "mainline" referred to correctional counselors being required to watch inmates in the dining room, and that she experienced back pain when she rose from sitting at a staff dining table that she was allowed to sit at in the performance of her duties.

In support of her reconsideration request, appellant submitted a treatment note dated June 11, 1998 from Dr. Tarek Nessouli, a Board-certified orthopedic surgeon, who noted that appellant experienced low back pain that came on suddenly when she was standing at work. He diagnosed lumbar back strain with the possibility of periformis syndrome. Dr. Nessouli, however, did not address the issue of causal relationship.

Appellant further submitted a report of a magnetic resonance imaging (MRI) scan dated October 26, 1998, which revealed mild dessication, a bulging disc and mild lateral recess stenosis at L4-5.

In a decision dated February 9, 1999, the Office performed a merit review and modified its October 9, 1998 decision to reflect that an employment incident occurred on June 10, 1998. The Office, however, denied compensation on the grounds that appellant failed to establish a causal relationship between the June 10, 1998 employment incident and her alleged back condition.

The Board finds that appellant failed to carry her burden of proof in establishing that she sustained a back injury on June 10, 1998 in the performance of duty.

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, that the claim was timely 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury that must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁵ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

¹ 5 U.S.C. §§ 8101-8193.

² See *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989)

³ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *Id.*

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁶ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁷

In the instant case, there is no rationalized medical evidence linking appellant's back condition to the event she described as occurring at work on June 10, 1998. Dr. Brown who examined appellant the day following the alleged injury has specifically opined that her diagnosed back strain was not caused or aggravated by an employment activity. Although appellant submitted a report by Dr. Nessouli that raised the possibility of periformis syndrome and a bulging disc confirmed by an MRI dated October 26, 1998, the doctor did not offer an opinion on the issue of causation. Dr. Nessouli's opinion in no way explains how appellant could have sustained a bulging disc or any of the diagnosed conditions as a result of standing up from a table. In the absence of a rationalized opinion addressing with medical rationale the etiology of appellant's back injury, appellant has failed to carry her burden of proof in this case. The Board therefore finds that the Office properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Program dated February 9, 1999 is hereby affirmed.

Dated, Washington, DC
September 13, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

⁶ See *Woodhams*, *supra* note 3.

⁷ *Id.*