U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET BOHM and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Milwaukee, WI

Docket No. 00-2195; Submitted on the Record;
Issued August 2, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she injured her right ankle and both knees in the performance of duty.

On July 27, 1999 appellant, then a 51-year-old cantographer, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that on July 15, 1999 she stepped into a crack and twisted her ankle, and fell, injuring her right ankle and knees. She did not stop work.

Accompanying appellant's claim was an authorization for medical treatment dated July 15, 1999 prepared by Dr. Peter J. McNamara, a Board-certified internist; a certificate to return to work dated July 23, 1999 prepared by Dr. McNamara; and an attending physician's report dated July 26, 1999 prepared by Dr. McNamara. The authorization for medical treatment noted appellant sustained an injury on July 15, 1999. He noted appellant's symptoms of tenderness of the right lateral ligament; pain of the left and right knee and acute strain of the lateral ankle ligaments. The certificate to return to work prepared by Dr. McNamara indicated appellant had been treated since July 15, 1999 and noted appellant was unable to work on July 15, 16 and 23, 1999. The attending physician's report dated July 26, 1999, prepared by Dr. McNamara indicated appellant twisted her right ankle and fell, striking both knees and injuring her right ankle. Dr. McNamara diagnosed appellant with a strained ligament. He noted with a checkmark "no" that the condition was not caused or aggravated by an employment activity. Dr. McNamara noted that appellant was disabled from July 16 to 19, 1999.

In a letter dated February 29, 2000, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that the appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

On April 10, 2000 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.[1] The Office found that the medical evidence was not sufficient to establish that her medical condition was caused by employment factors.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury to her right ankle and both knees in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of 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 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 the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[4] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[7]

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[4] *Elaine Pendleton*, *supra* note 2.

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

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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 the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[8]

In the instant case, appellant has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged right ankle, and right and left knee conditions are causally related to the employment factors or conditions. On February 29, 2000 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated her ankle or knee conditions. In neither of Dr. McNamara's reports, including the authorization for medical treatment or the attending physicians report, does he note a history of the injury or the employment factors believed to have caused or contributed to the appellant's right ankle and right and left knee conditions.[9] Dr. McNamara's attending physician's report dated July 26, 1999, indicated a diagnosis of strain of ligament, however, he noted with a checkmark "no" that the condition was not caused or aggravated by an employment activity. The Board notes that Dr. McNamara's reports do not indicate that he is familiar with the history of appellant's injury.[10] Additionally, Dr. McNamara's reports do not include a rationalized opinion regarding the causal relationship between appellant's right ankle, right and left knee conditions and the factors of employment believed to have caused or contributed to such condition.[11] Therefore, these reports are insufficient to meet appellant's burden of proof.

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 his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[12] Causal relationships must be established by

[8] *James Mack,* 43 ECAB 321 (1991).

[9] *See Cowan Mullins,* 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

[10] *Id.*

[11] *See Theron J. Barham,* 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

[12] *See Victor J. Woodhams,* 41 ECAB 345 (1989).

rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.[13]

The decision of the Office of Workers' Compensation Programs dated April 10, 2000 is affirmed.

Dated, Washington, DC
August 2, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[13] With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).