U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY P. GREATHOUSE and DEPARTMENT OF THE AIR FORCE, COLUMBUS AIR FORCE BASE, Columbus, MI

Docket No. 00-2646; Submitted on the Record;
Issued August 27, 2001

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant met her burden of proof in establishing that she sustained a herniated cervical disc in the performance of duty on December 2, 1999.

On December 16, 1999 appellant, then a 51-year-old supply analyst, filed a claim for compensation alleging that she sustained a herniated cervical disc on December 2, 1999 while lifting and carrying a garment bag. She stopped work on December 13, 1999.

In support of her claim, appellant submitted two witness statements as well as a request for travel. The witness statements indicated that on December 2, 1999, appellant was preparing to depart from a site visit in Columbus, Mississippi when she injured her shoulder and back while carrying a garment bag. The travel voucher indicated that appellant was approved for travel to Columbus, Mississippi from November 29 to December 2, 1999.

Subsequently, appellant submitted notes from Dr. Richard H. Schwartz, a Board-certified neurologist, dated December 14 and 28, 1999 and January 20, 2000; a patient data sheet dated December 14, 1999; and a progress noted from Dr. Richard K. Wallin, a Board-certified family practitioner, dated January 12, 2000. The note from Dr. Schwartz dated December 14, 1999 noted a history of appellant's injury indicating an acute onset of pain in the right arm and right shoulder on December 2, 1999. Appellant indicated that she was awakened with severe arm pain which had been unremitting since that time. He noted that he reviewed a magnetic resonance imaging (MRI) scan which revealed a significant bone spur with disc space narrowing at C5-6 and C6-7; with a possibility of a small lateral disc bulge at the level C6-7. Dr. Schwartz recommended an anterior cervical discectomy and fusion at both levels. The note of December 28, 1999 indicated that appellant underwent a C5-6 and C6-7 anterior cervical discectomy and fusion. Dr. Schwartz noted appellant was healing properly. The January 20, 2000 note indicated that appellant had been under the doctor's care for two herniated cervical discs since December 14, 1999 and underwent surgery on December 20, 1999. The patient data sheet provided a summary of dates appellant was treated for the herniated cervical disc. The progress note from Dr. Wallin of January 12, 2000 indicated that appellant was treated since

December 4, 1999 for neck, arm and back pain. Dr. Wallin noted that appellant was diagnosed with a herniated cervical disc for which she underwent surgery. He noted that appellant was unable to work from December 4 to 14, 1999.

By letter dated March 17, 2000, the Office of Workers' Compensation Programs requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish an injury. The Office particularly advised appellant of the type of medical evidence needed to establish her claim.

Appellant submitted various medical records, many of which were duplicative of evidence already in the record. She also submitted employing establishment medical records from March 5, 1990 to January 31, 2000; an x-ray and MRI scan of the cervical spine dated December 13, 1999; an operative report dated December 20, 1999; and progress notes from Dr. Gary L. Halversen, a Board-certified radiologist, dated December 28, 1999 and January 27, 2000. The employing establishment progress notes from March 5, 1990 to January 31, 2000 documented appellant's various illnesses, which were unrelated to the present claim. The January 31, 2000 note indicated that appellant underwent cervical disc surgery and noted that appellant was unable to sit for long periods of time and was unable to lift with her right arm or grip with her right hand. The notes indicated that appellant could return to limited duty with restrictions for a four-week period and then resume her regular duties. The x-ray of the cervical spine revealed degenerative changes predominately at the C5-6 level. The MRI scan revealed osteophyte formation and possible subligamentous herniation at C5-6 impressing upon the cord centrally. The operative report dated December 20, 1999 indicated that Dr. Schwartz performed a microsurgical anterior cervical discectomy and decompression at C5-6 and C6-7; allograft bone fusion at C5-6 and C6-7 with cornerstone graft; and anterior cervical plating at C5 through C7. The preoperative and postoperative diagnoses were herniated nucleus pulposus at C5-6 and cervical spondylosis at C5-6 and C6-7. The progress notes from Dr. Halversen dated December 28, 1999 did not indicate a history of injury but noted that appellant was status post anterior cervical discectomy and plate fusion crossing C5-6 and C6-7. Dr. Halversen noted that the x-rays demonstrated a successful discectomy in good alignment. The January 27, 2000 note indicated that appellant was status post anterior cervical discectomy, with the alignment unchanged from his December 28, 1999 note. This medical evidence did not note appellant's history of injury or the cause of the condition.

In a decision dated June 7, 2000, the Office denied appellant's claim as the medical evidence was not sufficient to establish that the condition was caused by the employment factor as required by the Federal Employees' Compensation Act.[1] The Office found that there was no medical evidence submitted which indicated that the diagnosed condition of a herniated cervical disc was in any way related to the alleged employment factor.

The Board finds that appellant has failed to establish that she sustained a herniated disc in the performance of duty on December 2, 1999 as alleged.

An employee seeking benefits under the Act has the burden of establishing the essential elements of her or her claim including the fact that the individual is an "employee of the United

[1] 5 U.S.C. §§ 8101-8193.

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 her 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]

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]

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[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).

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

In this case, it is not disputed that appellant was lifting a garment bag on December 2, 1999. However, she has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged disc condition is causally related to the employment factors or conditions.

On March 17, 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 lifting a garment bag caused or aggravated her neck or shoulder condition. Appellant submitted several reports from Dr. Dr. Schwartz dated December 14 and 28, 1999 and January 20, 2000, which diagnosed appellant with a herniated nucleus pulposus at C5-6 and cervical spondylosis at C5-6 and C6-7. Dr. Schwartz's December 14, 1999 report indicated that appellant experienced an acute onset of pain in the right arm and right shoulder on December 2, 1999 that had been unremitting since that time. He noted that he reviewed an MRI scan which revealed a significant bone spur with disc space narrowing at C5-6 and C6-7; with a possibility of a small lateral disc bulge at the level C6-7. Dr. Schwartz's December 28, 1999 note indicated that appellant underwent a successful C5-6 and C6-7 anterior cervical discectomy and fusion. Dr. Schwartz's January 20, 2000 note indicated that appellant had been under his care for two herniated cervical discs since December 14, 1999 and that he performed surgery to correct her condition on December 20, 1999. In none of Dr. Schwartz's reports does he address a history of the injury or the lifting incident alleged to have caused or contributed to appellant's right shoulder and neck condition. Rather, he merely indicated that appellant sustained an acute onset of pain in the right arm and right shoulder on December 2, 1999.[9] Additionally, Dr. Schwartz's reports do not include a rationalized opinion regarding the causal relationship between appellant's right shoulder and neck condition and the factors of employment believed to have caused or contributed to such condition.[10] Therefore, these reports are insufficient to meet appellant's burden of proof.

The remainder of the medical evidence, including reports from Dr. Halversen and Dr. Wallin, failed to note appellant's history of injury or to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient 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.[11] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office therefore properly denied appellant's claim for compensation.

[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] *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).

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

The decision of the Office of Workers' Compensation Programs dated June 7, 2000 is affirmed.

Dated, Washington, DC
August 27, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member