

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PEARLENE MORTON and DEPARTMENT OF THE TREASURY,
BUREAU OF ENGRAVING & PRINTING, Washington, DC

*Docket No. 01-151; Submitted on the Record;
Issued August 30, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained forehead, right hand, neck and back injuries in the performance of duty on November 24, 1999.

On November 24, 1999 appellant, then a 60-year-old currency examiner, filed a notice of traumatic injury alleging that, at 8:40 p.m. that day, during her regular tour of duty, she sustained a laceration to her forehead, a cut on her right hand and "pulled neck and back muscles" when she lost her balance while coughing, fell to the side and struck a mechanical lift. Her version of events was confirmed by Tracy Richardson, appellant's supervisor and coworker Melvin Cuffie, who both witnessed appellant fall. Appellant stopped work on November 24, 1999 and returned to full duty on January 10, 2000.¹

By decision dated March 27, 2000, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that fact of injury was not established.² The Office accepted that the November 24, 1999 incident occurred at the time, place and in the manner alleged, but found that appellant submitted insufficient evidence to establish that she sustained an injury as a result of that incident.

Appellant disagreed with this decision and in an April 20, 2000 letter requested reconsideration. She submitted additional evidence.

In a November 24, 1999 incident report, Lewnetta LaFayette, an occupational health nurse, noted that she was called at approximately 8:35 p.m. that day to respond to appellant's

¹ Appellant received continuation of pay for the period November 25, 1999 to January 7, 2000.

² In a December 30, 1999 letter, the Office advised appellant of the type of additional medical and factual evidence needed to establish that she sustained an injury related to the November 24, 1999 incident. Appellant was given 30 days in which to submit such evidence. The record indicates that appellant did not submit any additional evidence prior to issuance of the Office's March 27, 2000 decision.

emergency. She noted that several witnesses saw appellant fall and strike her head on the metal lift. Ms. LaFayette stated that appellant was “lying on the floor awake and responsive ... bleeding from an open laceration above the left eyebrow and also laceration to the palm side of fourth finger right hand.” She noted that appellant lost between 50 and 100 cubic centimeters (ccs) of blood. Ms. LaFayette summoned an ambulance, applied pressure dressings to the lacerations and attended appellant until she was transported to the hospital at 9:10 p.m.

In a November 24, 1999 authorization for examination and/or treatment (Form CA-16), Diane Benjamin, a compensation specialist, authorized appellant’s emergency treatment at George Washington University Hospital for the forehead and right hand lacerations.

By decision dated May 3, 2000, the Office denied reconsideration on the grounds that her April 20, 2000 letter was insufficient to warrant a merit review of its prior decision. The Office’s decision does not mention the November 24, 1999 report and Form CA-16 submitted by appellant accompanying the April 20, 2000 letter.

Appellant disagreed with this decision and in a May 30, 2000 letter requested an oral hearing before a representative of the Office’s Branch of Hearings and Review. She submitted additional evidence: November 25, 1999 emergency room registration and discharge forms; a November 25, 1999 CT (computerized tomography) scan of the head; and November 25, 1999 emergency room reports by Dr. Jolly B. Tilman noting a history of November 24, 1999 head injury and right hand lacerations and that appellant reported headache and a “staggery” feeling. He noted increased soreness of the back and neck.

In a July 5, 2000 letter, appellant contended that she did not receive the Office’s December 30, 1999 letter. She submitted additional medical evidence not previously of record, reports dated November 29, December 6 and 28, 1999, January 4 and 7 and April 11, 2000 from Dr. Kadie E. Leach, an attending internist.

By decision dated July 25, 2000, the Office denied appellant’s request for a hearing under section 8124(b) of the Federal Employees’ Compensation Act as she previously requested reconsideration. The Office exercised its discretion and determined that appellant’s hearing request was denied on the additional grounds that her case could be equally well advanced through the submission of new, relevant evidence accompanying a valid request for reconsideration.³

The Board finds that appellant has established that she sustained a laceration of the forehead and a cut on her right hand in the performance of duty on November 24, 1999.

The Office denied appellant’s claim on the grounds that she submitted insufficient evidence to establish that the November 24, 1999 incident caused any medical condition. Although causal relationship generally requires a rationalized medical opinion, the Board has

³ The Office did not conduct a merit review of the medical evidence appellant submitted accompanying her May 5 and July 5, 2000 letters.

held that the Office may accept a case without a medical report when one or more of the following criteria, as set forth in the Office's procedure manual, are satisfied:⁴

“(1) The condition reported is a minor one which can be identified on visual inspection by a lay person (e.g., burns, lacerations, insect stings or animal bites);

“(2) The injury was witnessed or reported promptly, and no dispute exists as to the fact of injury; and

“(3) No time was lost from work due to disability.”⁵

In this case, appellant claimed a forehead laceration and a cut on her right hand, the type of injuries set forth in the first criterion set forth above. The November 24, 1999 incident report by Ms. LaFayette, the occupational health nurse, contains a detailed description of appellant's head and right hand injuries, “an open laceration above the left eyebrow and also laceration to the palm side of fourth finger right hand” causing a 50- to 100-cc loss of blood. Although Ms. LaFayette's report is not of probative medical value because nurses are not considered as physicians under the Act,⁶ her account establishes the presence of the claimed injuries at the time and place of the accepted incident, observations which could have been made by a layperson.

The second element of the Office's criteria is also satisfied, as all of the factual accounts of record regarding the circumstances of the November 24, 1999 fall are detailed, consistent and were made contemporaneously to the incident. Also, the employing establishment does not contest that the November 24, 1999 incident occurred at the time, place and in the manner alleged. Most persuasively, appellant's supervisor, Tracy Richardson and coworker Melvin Cuffie, both witnessed appellant fall and their accounts are in complete agreement with appellant's version of events. Accordingly, the Board finds that the record establishes that the forehead laceration and cut to the right hand occurred in the performance of duty.

As fact of injury has been established, the case must be remanded to the Office for further development. The Office made no findings regarding the period and extent of any work-related disability.⁷ This is significant as appellant was off work from November 24, 1999 to January 7, 2000. Further, appellant is entitled to compensation for any medical expenses related

⁴ *Timothy D. Douglas*, 49 ECAB 558 (1998).

⁵ Federal (FECA) Procedure Manual, Part 2 -- *Claims*, Causal Relationship, Chapter 2.805.3d(2) (November 1991).

⁶ *Joseph N. Fassi*, 42 ECAB 677 (1991).

⁷ *Leon C. Collier*, 37 ECAB 378, 379-80 (1986).

to her injury.⁸ Also, appellant claimed that she sustained neck and back injuries as a result of the November 24, 1999 incident and submitted medical reports concerning her treatment for those conditions. After such further development as it considers necessary, the Office shall issue an appropriate decision on appellant's entitlement to benefits.⁹

The decisions of the Office of Workers' Compensation Programs dated July 25 and May 3, 2000 are set aside, the March 27, 2000 decision is reversed and the case remanded for further development consistent with this decision and order.

Dated, Washington, DC
August 30, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ See *Frederick Justiniano*, 45 ECAB 491, 496 (1994); *Billy Ware Forbes*, 45 ECAB 157, 163 (1993); 5 U.S.C. § 8103.

⁹ As the case is remanded for further development, the issues regarding the denial of appellant's request for reconsideration and whether the Office properly denied appellant's request for a hearing is moot.