U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA L. SEAY and DEPARTMENT OF VETERANS AFFAIRS, PUGET SOUND HEALTH CENTER CLINIC, Seattle, WA

Docket No. 01-677; Submitted on the Record;
Issued December 13, 2001

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury on October 7, 1999 while in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained a work injury.

On October 18, 1999 appellant, then a 46-year-old program clerk, filed a traumatic injury claim, alleging that on October 7, 1999 at 3:00 p.m., she tripped while stepping up to a concrete walkway causing pain in her back, hips and legs. Her supervisor controverted the claim because appellant failed to notify her until October 13, 1999, six days after the alleged incident.[1]

In a statement dated October 14, 1999, two witnesses stated that they saw appellant at about noon on October 7, 1999, when she stubbed her toe and almost fell to the ground. They noted that she was "able to catch her balance but she jerked forward and backwards in the process. When appellant got to us she complained about her back getting tight because of the tripping."

In a report dated October 20, 1999, appellant's supervisor stated that appellant related that she "had fallen on the way to work on October 7, 1999."

In an attending physician's report dated October 26, 1999, Dr. Cynthia Ferrucci stated that appellant, who had preexisting lumbar disability disease and fusion, had also sustained a lumbar strain on October 7, 1999 which was causally related to work. She noted that appellant was totally disabled from October 7 to November 2, 1999 and partially disabled from November 2 to 16, 1999. In a report dated October 26, 1999, Dr. Ferrucci stated that appellant's restrictions included sitting for no more than four hours, walking no more than one hour, light

[1] The date appellant listed on the claim was October 14, 1999, but the date the supervisor received the claim was October 18, 1999.

pushing and pulling and "half time" work for two weeks. In a report dated October 29, 1999, Dr. Ferrucci stated that appellant was released to return to light duty effective November 10, 1999 with prior restrictions in effect.

By letter dated November 9, 1999, the Office of Workers' Compensation Programs requested additional information regarding her claim including her physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

In a report dated October 19, 1999 and received by the Office on December 2, 1999, Dr. Joseph Iacolucci stated that he had examined appellant that day and that she had lumbar strain from a fall at work on October 7, 1999.

In a report dated November 18, 1999, Dr. Ferrucci stated that appellant was totally disabled from November 15 to 29, 1999 and was released to return to light duty on November 30, 1999 "at half time." In a report dated November 24, 1999, he stated that appellant's work-related injury on October 7, 1999 was "reexacerbation of a previous problem with lumbar disability disease. She has a history of L4-5, S-1 fusion subsequent to a back injury in 1985" and that "[t]he temporal relationship of the onset of pain two days following the slip at work supports the causal relationship."

In a note dated November 30, 1999, the therapist noted that appellant's condition "[f]lared up splitting wood."

By decision dated January 7, 2000, the Office denied appellant's claim on the grounds that she failed to establish fact of injury. The Office noted discrepancies regarding appellant's reported time of the incident.

By letter dated February 1, 2000, appellant requested an oral hearing, which was held on June 29, 2000. She testified that she injured herself around 1:00 p.m. on October 7, 1999, that she did not report the incident to her supervisor[2] and that she initially sought medical treatment on October 18, 1999.

In a decision issued on September 25, 2000, the hearing representative affirmed the Office's January 7, 2000 decision denying benefits.

The Board finds that appellant failed to establish that she sustained an injury on October 7, 1999 causally related to her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act[3] 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 period of the Act, that an injury was

[2] Appellant stated that she told someone, but not her supervisor, on October 8 or 9 that she "had stumbled, outside in the smoking area" on October 7, 1999.

[3] 5 U.S.C. §§ 8101-8193.

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.[4] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

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.[6] An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. She has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, her statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.[7]

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.[8]

In this case, appellant alleged she was injured when she tripped on a concrete walkway, which caused pain in her back, hips and legs. "Jarred my whole body." Although appellant stated that the incident occurred at 3:00 p.m., witnesses stated that they saw appellant slip at about noon on October 7, 1999. Further, appellant's supervisor stated that appellant related that she "had fallen on her way to work on October 7, 1999." At her hearing appellant testified that she noted in her claim that the injury occurred at 3:00 p.m. because she filled out the form at 3:00 p.m. and she thought that she was required to note the time she filled it out. In addition, appellant stopped work on October 7, 1999 but did not seek medical treatment until 11 days later on October 18, 1999 and did not file her claim until October 18, 1999.

Although the medical reports noted that appellant's lumbar strain was causally related to her employment, none of the medical reports provided a rationalized medical opinion to establish

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

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

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

[7] *Carmen Dickerson*, 36 ECAB 409 (1985).

[8] *John M. Tornello*, 35 ECAB 234 (1983).

that the incident of October 7, 1999 caused her lumbar strain. In her November 24, 1999 report, Dr. Ferrucci stated that appellant's onset of pain two days following the slip at work supported causal relationship. However, she placed appellant on total disability from October 7, 1999, even though appellant worked from that time until October 18, 1999. Further, the record does not reveal that appellant stated that her pain began two days after the incident. Lastly, appellant's physical therapist stated that her condition "flared up splitting wood" on November 30, 1999. The Board notes that appellant was on restricted duty at the time she was splitting wood.

These circumstances of late notification, varying times of the alleged incident, seeking medical treatment more than 10 days after the alleged incident, inconsistent medical histories regarding the onset of pain and appellant's strenuous exercise during her restricted duty time cast serious doubt on appellant's *prima facie* claim.[9] For these reasons, appellant has not met her burden of proof.

The decisions of the Office of Workers' Compensation Programs dated September 25 and January 7, 2000 are affirmed.[10]

Dated, Washington, DC
December 13, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

[9] *Annie L. Billingsley*, 50 ECAB 210 (1998) (finding that a medical opinion not fortified by medical rationale is of little probative value); *Lucretia M. Nielson*, 41 ECAB 583, 594 (1991) (finding that an opinion on causal relationship which consists of a physician checking "yes" to a medical form report to find causal relationship is of little probative value.)

[10] The Board notes that the record contains evidence, which was submitted subsequent to the Office's September 25, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).