U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERYL L. GREEN and DEPARTMENT OF THE NAVY, NAVY DRUG SCREENING LABORATORY, Jacksonville, FL

Docket No. 98-2380; Submitted on the Record;
Issued February 9, 2001

DECISION and ORDER

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

The issue is whether appellant sustained injuries to her neck and left shoulder in the performance of duty.

The Board has duly reviewed the case record on appeal and finds that this case is not in posture for a determination of whether appellant sustained injuries to her neck and left shoulder in the performance of duty. Further development of the medical evidence is required.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of proof to establish the essential elements of her claim.[2] When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[3]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office of Workers' Compensation Programs 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Margaret A. Donnelley*, 15 ECAB 40 (1963).

[3] *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4]

On March 25, 1998 appellant, then a 36-year-old physical science technician, filed a notice of occupational disease, Form CA-2, alleging that she developed pain on the left side of her neck and in her left shoulder area as a result of continuously lifting and pulling trays weighing 13 to 15 pounds, which were sometimes located overhead, while in the performance of her duties. Appellant stated that she first became aware of her condition on October 20, 1997. Appellant did not stop work, but began performing light duty.

By letter dated March 28, 1998, the Office informed appellant that the initial medical evidence submitted in support of her claim was insufficient to establish entitlement and requested that appellant submit additional information, to include a rationalized medical report from her treating physician, explaining the nature of appellant's condition and its causal relationship, if any, to her employment duties. On May 7, 1998 appellant submitted a letter further describing the employment duties she felt had caused her claimed conditions and also submitted additional medical evidence in support of her claim.

In a decision dated June 12, 1998, the Office denied appellant's claim on the grounds that the record contained no well-rationalized medical evidence to establish that she had sustained an employment-related injury, as alleged.

It is undisputed that appellant's job duties involve lifting and pulling trays, sometimes overhead and the medical evidence establishes that she developed neck and left shoulder pain and sought medical attention for these complaints. The question, therefore, becomes whether the duties she performed at work caused or aggravated the neck and left shoulder conditions for which she seeks compensation.

Causal relationship is a medical issue,[5] and the medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incidents or factors of employment.[8]

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[4] *John J. Carlone, supra* note 3.

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384-85 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

The relevant medical evidence of record includes reports dated November 25, 1997, from Dr. Manley W. Kilgore, II, a Board-certified neurologist, who stated that recent electromyography results were normal, but that nerve conduction studies indicated the presence of bilateral carpal tunnel syndrome. Appellant also submitted a November 28, 1997 magnetic resonance imaging study from Board-certified radiologist Dr. Frank Scarvey, which revealed minimal spondylosis at C5-6 but with no evidence of a herniated nucleus pulposus, an April 16, 1998 functional capacity evaluation and form reports dated March 10 and April 7, 1998, on which Dr. Carlos R. Tandron, a Board-certified orthopedic surgeon, noted a diagnosis of "pain cervical spine" and indicated by check mark that this was a work-related condition.

The record also contains an April 28, 1998 narrative report and accompanying treatment notes, from Dr. Howard B. Weiss, appellant's treating osteopath. Dr. Weiss noted that appellant gave a history of having sustained a work injury on October 20, 1997 while lifting a tray overhead, that she further reported a history of similar complaints prior to this injury and that she also stated that she had sustained an employment injury to her right shoulder and neck in November 1996. After performing a complete physical examination and a review of the prior medical evidence and diagnostic studies, he noted that appellant had a history of partial rotator cuff tear, right shoulder, in June 1997, and further diagnosed cervical spondylosis C5-6, mild by report and myofascial pain syndrome. Dr. Weiss concluded that "as per the patient's history" he believed that appellant's "current complaints are causally related to the injury of October 20, 1997."

The medical record in this case lacks a well-reasoned narrative from a physician explaining how appellant's neck and left shoulder complaints are causally related to her specific employment duties. Drs. Kilgore and Scarvey did not express an opinion as to the cause of the conditions revealed by diagnostic testing and Dr. Tandron expressed his opinion on causal relationship only by check mark.[9] Finally, while Dr. Weiss clearly stated that he believed appellant's diagnosed cervical spondylosis and myofascial pain syndrome were related to her employment injuries, Dr. Weiss did not explain the reasoning behind his conclusion.[10] Nonetheless, the Board finds that the medical reports submitted by appellant, taken as a whole, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[11] Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's claim and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician

[9] A medical report which checks a box on a form report "yes," with regard to whether a condition is employment related, is of diminished probative value without further detail and explanation. *Alberta S. Williamson*, 47 ECAB 569 (1996); *Lester Covington*, 47 ECAB 539 (1996).

[10] The Board notes that while Dr. Weiss also related appellant's condition to a specific incident occurring on October 20, 1997, rather than to the cumulative effect of appellant's employment duties over time, this is not inconsistent with appellant's statement on her claim form that she first became aware of her condition on October 20, 1997. In addition, the employment factor to which Dr. Weiss related appellant's injury, lifting a tray overhead, was one she performed every day.

[11] *See John J. Carlone, supra* note 3 (finding that the medical evidence was not sufficient to discharge appellant's burden of proof but remanding the case for further development of the medical evidence given the uncontroverted inference of causal relationship raised).

for a second opinion. The Board will set aside the Office's June 12, 1998 decision and remand the case for further development of the medical evidence. Upon return of the case record the Office should double this case file with any other injury claims appellant has filed for the same parts of the body.[12] Following such further development as may be necessary the Office shall issue an appropriate final decision on appellant's claim.

The June 12, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
February 9, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[12] FECA Bulletin No. 97-10 (issued February 15, 1997) provides that cases should be doubled when a new injury case is reported for an employee who has filed a previous injury claim for the same part of the body.