

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYN A. TAVENNER and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Richmond, VA

*Docket No. 00-1880; Submitted on the Record;
Issued July 5, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on July 2, 1999, as alleged.

On November 15, 1999 appellant, then a 49-year-old senior adviser, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on July 2, 1999 at 6:15 p.m. she fell in her office as she was packing and moving boxes behind her desk. On the CA-1 form Dianne Grant, a coworker, stated that she heard a crashing sound and witnessed appellant attempting to get off the floor because she had fallen and cut her leg. Ms. Grant stated that she further assisted appellant in caring for her injury and escorted her to her car. John M. Dalrymple, appellant's supervisor, also noted on the CA-1 form that the employing establishment controverted appellant's claim and stated "untimely filed claim. Not entitled to c[ontinuation] o[f] p[ay]." Attached to appellant's claim form was a July 26, 1999 letter in which appellant stated in part:

"As I moved behind the desk to the left carrying the box, I tripped over a drawer then a box with my right foot which hung onto the drawer handle. I then fell forward with my left arm hitting the table to my left knocking off of it a laptop computer, 3[-]hole punch and coffee pot. I twisted my left shoulder and arm and hit my left hand on the cabinet, my right leg hit the drawer, box, and trash can, then I hit the floor. My head twisted as I fell, within seconds my right shin began to swell and was cut and my right leg from knee to upper thigh inside started to bruise. I put a cold compress on it to help reduce swelling. My left arm, shoulder, neck hurt and I have had some numbness in the left hand. My right leg in the thigh area continues to have muscle tremors.

"I initially had dizziness and headaches, especially upon turning or bending. I must still be careful or I get dizzy. I am still unable to bend well at the knees and have pain or muscle tension in my leg, back or neck if I stand or walk frequently. I must now keep my right leg extended and elevated frequently to get relief and I

can [no]t hold many items in my left hand, because it affects circulation. I still have tenderness and soreness in my right leg, especially in the knee to thigh area. Dianne Grant, a coworker, was in the next room and heard the loud crash. She helped me place the cold can which we used as a compress on my leg and walked with me as far as possible to my car because I was unsteady.”

Appellant stated that she first received medical attention on July 6, 1999 from Dr. Philip Wisotsky and returned to work on July 8, 1999.

In support of her claim, appellant submitted a November 8, 1999 medical report from Dr. Leonid D. Selya, at Prince George’s Orthopedic Associates. Dr. Selya noted that appellant complained of neck pain, left shoulder pain and paresthesias along her left arm. Upon physical examination and x-rays, he stated: “We should rule out a rotator cuff tear on the left side. We also should rule out a cervical disc herniation.” He noted that a magnetic resonance imaging (MRI) scan of the cervical spine and left shoulder would be given further examination.

By letter dated December 7, 1999, the Office advised appellant and the employing establishment that the information submitted was not sufficient to establish that appellant sustained an injury as alleged. The Office provided appellant and the employing establishment with a detailed list of evidence needed and questions to be followed. The Office allotted appellant 30 days in which to submit the requested information.

On December 30, 1999 appellant submitted a billing statement and a duplicate copy of the November 8, 1999 medical report from Dr. Selya.

By decision dated January 14, 2000, the Office denied appellant’s claim finding that she failed to establish that she sustained an injury in the performance of duty. The Office stated:

“The initial evidence of file supported that you actually experienced a medical condition, however, it fails to provide the five major components required by the Federal Employ[ees’] Compensation Act.... Therefore, an injury within the meaning of the [Act] was not demonstrated.

“You were advised of this by letter dated December 7, 1999 and afforded the opportunity to provide supportive evidence.

“Additional medical evidence was received into the Office. A detailed and extensive medical report from Dr. Sel[y]a was reviewed; however, the medical evidence remains deficient. The essential prerequisite for all compensation cases is that the medical evidence of record must provide a diagnosis, a history of the injury as described on the notification of injury and the specific factors of employment that caused the medical condition. The [Act] is definitive in its requirements and you have failed to submit adequate medical evidence of probative value to support that you suffered an injury.”

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty on July 2, 1999, as alleged.

An employee seeking benefits under the Act 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 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.¹ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

In a traumatic injury case, in order to determine whether a federal employee actually sustained an injury in the performance of duty, it must first be determined whether “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.³ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁴ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical 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.⁵

The Office has accepted that an incident occurred in appellant’s office as Dianne Grant, appellant’s coworker, stated that she heard crashing sounds and witnessed appellant getting off the floor in her office with a cut on her leg on July 2, 1999. However, the question of whether an employment incident caused a personal injury generally can only be established by medical evidence,⁶ and appellant has not submitted rationalized probative medical evidence to establish that the employment incident on July 2, 1999 caused a personal injury and resultant disability.

Despite appellant’s indication, the record contains no medical evidence to substantiate that she was treated for any injury as alleged on her claim form from Dr. Wisotsky on July 6, 1999. The only medical evidence appellant submitted was the November 8, 1999 medical report from Dr. Selya. In this report, he stated:

“It started back in July 1999 when she fell at work. She injured her right leg, right arm, left arm, neck and back. Most of her pain improved except for the

¹ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *Victor J. Woodhams*, 41 ECAB 345 (1989).

³ *John J. Carlone*, 41 ECAB 354 (1989).

⁴ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁵ *Id.*

⁶ *See supra* note 3.

above-mentioned complaints. She takes Aspirin for her pain. Over the course of the last three months the intensity of her pain has not changed much. It bothers her and she feels quite disabled because she cannot do much with her left arm. She also has some stiffness in her left arm and neck.

“Past medical history is significant for a posterior spinal fusion of her scoliotic curvature from T3 to L3. It was done at John Hopkins Hospital in 1978 with Harrington rods. Past medical history is also significant for hypertension.”

Dr. Selya further noted that on physical examination appellant was in no acute distress and that x-rays showed abundant fusion of the upper thoracic spine with Harrington rods in place. Dr. Selya stated that rotator cuff tear on the left side and cervical disc herniation should be ruled out. This report does not provide a probative, rationalized medical opinion sufficient to demonstrate that appellant’s July 2, 1999 employment incident caused a personal injury or resultant disability. Dr. Selya noted appellant’s preexisting thoracic and lumbar conditions and appellant’s current complaints. He did not explain why her current condition was caused or aggravated by the employment injury. Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case. Appellant did not provide a medical opinion to sufficiently describe or explain the medical process through which the July 2, 1999 work accident would have been competent to cause the claimed injury.

The decision of the Office of Workers’ Compensation Programs dated January 14, 2000 is hereby affirmed.

Dated, Washington, DC
July 5, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member