U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of VERNETTA STEELE and DEPARTMENT OF JUSTICE, IMMIGRATION & NATURALIZATION SERVICE, Los Angeles, CA

*Docket No. 00-1308; Submitted on the Record;*
*Issued May 8, 2001*

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DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI, PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on December 23, 1998, as alleged.

On December 23, 1998 appellant, then a 53-year-old applications clerk, filed a traumatic injury claim alleging that on that date she sustained upper and lower back pain with headaches when she lifted case files at her workstation. She stopped work and first received medical care from Newbury Medical Group on the date of the alleged injury.

To support her claim, appellant submitted disability certificates dated December 29, 1998 to March 8, 1999 in which Dr. Eugene E. Christian, Jr., a Board-certified internist, stated that appellant was unable to work. In his note dated March 8, 1999, Dr. Christian stated that appellant would be released to return to work on March 30, 1999. Appellant also submitted an undated form report from Dr. Christian in which he stated that he first examined appellant on December 29, 1998 and that she complained of low back pain. Dr. Christian noted his objective examination findings and diagnosed a herniated lumbar disc and low back pain.

In a statement dated January 6, 1999, Araceli Cobain, appellant's supervisor, alleged that on December 23, 1998 appellant complained about a new work assignment. Ms. Cobain stated that because of appellant's medical restrictions she bundled case files, no greater than four inches thick, and scattered the bundles in appellant's cubicle. She further stated that appellant grabbed two bundles, one at a time and placed them on other files. Appellant stated that she was not refusing to complete the assignment but it violated her restrictions. Ms. Cobain noted appellant's work restrictions and stated that appellant was "very upset" about the assignment. She stated that both she and appellant discussed the matter with Ms. Cobain's supervisor and that appellant stated that she needed a traumatic injury claim (Form CA-1) because she was being harassed and her blood pressure was escalating. Ms. Cobain alleged that she told appellant that she would need an occupation disease claim (Form CA-2) but that she did not have time to provide one.

By letter dated February 9, 1999, the Office of Workers' Compensation Programs advised appellant that the evidence of record was insufficient to support her claim. The Office

requested additional factual and medical evidence and it allowed appellant 30 days within which to respond to its request.

Subsequently, appellant submitted attending physician's reports dated March 1 and 29, 1999 in which Dr. Christian indicated by checkmark that appellant's condition was caused or aggravated by her employment. He stated that she had a history of degenerative disc disease and a herniated lumbar disc. Dr. Christian noted that magnetic resonance imaging (MRI) revealed a herniated disc at L3-4 and degenerative disc disease. He noted appellant's work restrictions and released her to work on March 30, 1999. In a March 4, 1999 report, Dr. Christian provided a history of the December 23, 1998 employment incident and his objective findings. Dr. Christian noted lower back tenderness, diffuse muscle spasm, decreased range of motion and bilateral pain with straight leg lifting. He diagnosed acute low back strain/spasm, herniated lumbar disc disease and advanced degenerative disc disease of the lumbar spine. Dr. Christian noted appellant's treatment and opined that she would be released to work on March 9, 1999. He restricted her from excessive standing, walking, bending, stooping, twisting and heavy lifting. Appellant also submitted medical evidence relating to a previous injury.[1]

In a narrative statement dated March 1, 1999, appellant stated that upon her arrival to work on December 23, 1998 she found her cubicle in disarray with stacks of case files placed on her chair and on the counters leaving no room to walk or sit. She estimated that bundles of the case files weighed between 25 and 30 pounds. Appellant stated that for approximately 20 to 25 minutes she stood, lifted and twisted in order to clear her work area. She alleged that her supervisor was harassing her by intentionally violating her work restrictions and leaving the case file bundles in her cubicle knowing that they weighed more than 15 pounds. Appellant described her symptoms and subsequent medical treatment.

By decision dated July 9, 1999, the Office denied appellant's claim on the grounds that the evidence of record was sufficiently conflicted regarding when and how she was injured as to seriously question whether she experienced the claimed event at the time, place and in the manner alleged.

By letter dated November 12, 1999, appellant requested reconsideration of her claim. To support her request, she submitted copies of previously submitted medical evidence from Dr. Christian dated December 29, 1998 to March 29, 1999. Appellant also submitted a narrative statement dated November 12, 1999 in which she alleged that on December 23, 1998 she sustained a traumatic injury when "she was forced to engage in excessive walking, standing, twisting, turning and lifting case files left in her workstation by her supervisor." She alleged that

[1] Appellant submitted a comprehensive report dated September 10, 1996 in which Dr. Stuart Baumgard, a Board-certified orthopedic surgeon, provided a history of an alleged May 31, 1996 injury, noted appellant's subjective complaints and stated his objective examination findings. She also submitted a report dated February 13, 1998, in which Dr. Frederick Lieb provided a history of an alleged November 12, 1997 injury and subsequent treatment. He noted appellant's complaints and his objective findings. In a supplemental report dated April 12, 1998, Dr. Lieb referred to an MRI report dated February 17, 1998 from Dr. Joel B. Garris, a Board-certified diagnostic radiologist, and diagnosed advanced degenerative disc disease at L3-4, posterior ridge protrusion or osteophyte ridge at L3-4, left lateral disc protrusion on L3-4, and moderate to advanced facet arthropathy at L3-S1. Dr. Lieb's April 29, 1998 supplemental report provided a rationalized opinion finding that appellant's degenerative disc disease was not related to the alleged November 12, 1997 employment injury. An MRI report dated February 17, 1998 from Dr. Garris diagnosed advanced L3-4 degenerative disc disease, L3-4 posterior disc protrusion, left L3-4 lateral disc protrusion into the L3 nerve root foramen, and moderate to advanced L3-S1 facet arthropathy.

when she arrived at work at 7:00 a.m. on December 23, 1998 she found her cubicle in disarray with bundled case files weighing between 25 and 30 pounds. Appellant asserted that she stood, twisted, and lifted the case files to clear the area in violation of her medical restrictions. She stated that she attempted to report her alleged injury and discuss the matter with her supervisors, however, they screamed that she should carry the case files to her immediate supervisor's office or she would be reprimanded. Appellant discussed her subsequent medical treatment and her disagreement with the Office's decision denying her claim. She argued that her supervisor's failure to inform her of the employing establishment's controversion of her claim violated the Office's regulations.

Appellant further submitted a memorandum dated December 23, 1998 in which she advised her supervisors that completing 59 cases by the end of the day and lifting boxes and stacks of mail in her workstation, in addition to her other assignments, was a violation of the medical restrictions advised by her physician. She notified her supervisors that because of "excessive twisting, turning, and lifting of cases and other materials dumped in [her] workstation [she] injured [her] back" and she requested claim forms. Appellant further notified her supervisors that their "continued harassment" would result in legal proceedings. She requested a transfer to a new work location.

By merit decision dated December 17, 1999, the Office affirmed its prior decision dated July 9, 1999 on the grounds that the evidence of record was insufficient to warrant modification.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on December 23, 1998, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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.[3] Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[4]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of 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.[5] 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.[6]

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[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[5] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Id.*

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged, or whether the alleged injury was in the performance of duty.[7] Nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act. 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 surrounding facts and circumstances and his subsequent course of action.[8] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether she has established her claim.[9]

In this case, the Board finds that evidence of record does not cast serious doubt upon appellant's allegation that the December 23, 1998 employment incident occurred at the time, place and in the manner alleged. In statements dated March 1 and November 12, 1999, appellant alleged that on December 23, 1998 she arrived at work and found bundles of case files weighing between 25 and 30 pounds at her workstation. She also asserted that she stood, twisted and lifted the case files, in violation of her work restrictions, to remove them from her workstation. In a statement dated January 6, 1999, Ms. Cobain, appellant's supervisor, stated that she had placed bundled case files in appellant's cubicle and she indicated that appellant moved them. Although appellant and Ms. Cobain disagreed as to whether the assignment violated appellant's work restrictions, Ms. Cobain's statement is essentially consistent with appellant's statements and there is no evidence creating a serious question as to whether the December 23, 1998 incident occurred as alleged. Moreover, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10]

The second component of fact of injury is whether appellant submitted medical evidence to establish that the employment incident caused a personal injury. Causal relationship is a medical issue[11] and generally must be shown by rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical 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.[12] The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact nor the

[7] *See Elaine Pendelton*, *supra* note 3.

[8] *See Shirley A. Temple*, *supra* note 5 at 407; *Joseph H. Surgener* 42 ECAB 541, 547 (1991).

[9] *See Shirley A. Temple*, *supra* note at 5 407; *Constance G. Patterson*, ECAB 206 (1989).

[10] *Margarita Bell*, 48 ECAB 172, 176 (1996).

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

[12] *See Gary L Fowler*, 45 ECAB 365 (1994).

belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relationship.[13]

The record is devoid of relevant rationalized medical opinion evidence establishing a causal relationship between appellant's alleged condition and the December 23, 1998 employment incident. Dr. Christian's notes and reports, dated December 29, 1998 to March 29, 1999, merely noted appellant's complaints, Dr. Christian's objective findings, and contained diagnoses of low back pain, a herniated lumbar disc and degenerative disc disease but did not address the causal relationship issue. In attending physician's reports dated March 1 and 29, 1999, Dr. Christian indicated by checkmark that appellant's condition was caused or aggravated by her employment; however, the Board has held that a medical report that 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.[14] The remaining medical evidence of record, dated September 10, 1996 to April 29, 1998 is irrelevant as it is prior to and not contemporaneous with appellant's alleged December 23, 1998 injury.

The decisions of the Office of Workers' Compensation Programs dated December 17 and July 9, 1999 are hereby affirmed as modified.

Dated, Washington, DC
May 8, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

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

[14] *Lester Covington*, 47 ECAB 539 (19970.