

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA M. LAMBERT and DEPARTMENT OF DEFENSE,
BALLISTIC MISSILE DEFENSE ORGANIZATION, Washington, DC

*Docket No. 00-2198; Submitted on the Record;
Issued May 25, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden to establish that she sustained a back condition causally related to factors of her federal employment.

On August 26, 1999 appellant, then a 44-year-old contract cost analyst, filed a traumatic injury claim alleging that on March 14, 1997 she injured her back while moving a large stack of heavy boxes. In a narrative statement submitted in support of her claim, appellant described the events that took place between her initial injury and the filing of her claim in 1999. She stated that on March 14, 1997 as a result of moving and sorting approximately 20 boxes of paper, she developed considerable pain in her lower back. The next day, March 15, 1997 when she bent down to shake out her dog's bed, she experienced an extreme shooting pain in her lower back, radiating into her leg. The pain continued throughout the day and the following day, March 16, 1997 she sought medical attention at an express care facility. Appellant stated that the physician prescribed pain medication and told her to stay home for a day or two and to see her regular physician if the pain did not go away. She explained that on March 25, 1997 she saw her regular physician, Dr. Raymond Banzon, who ordered x-rays and referred her to Dr. John Johnson, an orthopedist. Appellant stated that she first saw him on April 15, 1997, at which time he diagnosed a ruptured disc at L4-5 and on April 29, 1997 the diagnosis was confirmed by a magnetic resonance imaging (MRI) scan. Appellant stated that conservative treatment did not relieve the pain and on June 17, 1997 she underwent a lumbar laminectomy. After the surgery, appellant returned to work on September 3, 1997. She stated that she remained symptom free until November 1997 when she began to feel tingling in her feet. By January 21, 1998, she was totally disabled and unable to work until April 30, 1998, at which time she was released to work two days a week. Appellant continued to work two days a week until August 24, 1998 when she again became totally disabled. Following several weeks of physical therapy, appellant returned to part-time work until February 8, 1999 when she again became totally disabled. After several weeks of rest and medication, appellant again returned to part-time work on March 9, 1999, but again became totally disabled on April 4, 1999. She stated that she returned to work three days a week on August 23, 1999, pending neurological reevaluation. Appellant concluded that as a result of her initial March 14, 1997 injury, she had repeated episodes of severe pain, loss of nerve

signal in her left leg, loss of sensation in her left foot, had been unable to work full time since the initial injury and had exhausted all leave options.

Appellant's claim form contains an August 26, 1999 statement from coworker Susan W. Pollack, who stated that she had been working with appellant to move, sort and organize the 20 boxes when appellant suddenly felt a sharp pain in her back and was unable to walk straight. In a supplemental statement, Ms. Pollack discussed the incident in greater detail.

By decision dated October 6, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the medical evidence did not establish that her claimed condition was causally related to factors of her federal employment. On October 26, 1999 appellant requested a review of the written record and submitted additional evidence in support of her claim. In a decision dated January 20, 2000, an Office hearing representative affirmed the Office's prior denial, finding that, while the evidence established that on March 14, 1997 appellant moved a number of heavy boxes, the medical evidence did not establish a causal relationship between this incident and her subsequently diagnosed back condition. On March 21, 2000 appellant requested reconsideration and submitted additional evidence in support of her claim. She also explained her delay in filing the claim, stating that she was initially told that after three days had elapsed from the date of the injury, she could no longer file a claim and that it was not until she was transferred to another division that she learned that this was incorrect. In a decision dated May 2, 2000, the Office found the newly submitted evidence insufficient to warrant modification of the Office's prior decision.

The Board has duly reviewed the case on appeal and finds that appellant has not met her burden of proof to establish that she sustained a back injury due to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation 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 filed within the applicable time limitation 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 is causally related to the employment injury."¹ 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.²

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.³ The second

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

In the present case, the Office found that the evidence of file supports the fact that the claimed events, incidents or exposures occurred at the time, place and in the manner alleged, but denied appellant's claim for compensation on the grounds that the medical evidence of record did not establish that her claimed medical condition resulted from the accepted incident.

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.⁴ Rationalized medical opinion 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.⁵

In support of her claim for a ruptured lumbar disc, appellant submitted numerous medical reports and treatment notes from her treating and consulting physicians. In the initial medical report of record, dated March 16, 1997, Dr. Michael Costa, a physician at the urgent care center, noted that appellant reported an abrupt onset of lower back pain which occurred while she was shaking out her dog's bed. His report does not contain any mention of any work activities, which may have contributed to appellant's condition. Dr. Costa diagnosed mechanical low back strain, prescribed medication and advised appellant to seek treatment with her regular physicians should the pain persist. The next report to give any history of the injury is the July 30, 1999 report from Dr. Dale W. Pcsolyar, appellant's treating Board-certified neurologist, who diagnosed lumbar radiculopathy and failed back syndrome and noted that the initial attack of back pain occurred on March 15, 1997, while appellant was shaking out her dog's bed. In a follow up report dated October 21, 1999, Dr. Pcsolyar stated that he had subsequently learned that appellant's first attack of pain came while she was moving approximately 20 boxes of paper in the performance of duty. He stated that "it is entirely plausible that the act of moving and lifting caused a tear in the annulus fibrosis of the disc, which led to the initial attack of pain and the following day was the extrusion of nucleus pulposus or central portion of the dis[c] that led to irritation, inflammation and compression of the nerve root that led to the leg pain and radiculopathy. Therefore, I think credence should be placed on this claim, of a work-related injury as the initial event that led to the cascade of lumbar radiculopathy and chronic intermittent

⁴ See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁵ *James Mack*, 43 ECAB 321 (1991).

pain.” In his most recent report of record, dated March 14, 2000, Dr. Pcsolyar attempted to further clarify his opinion, stating:

“As a medical doctor, I cannot scientifically prove that [appellant’s] sudden, sharp pain in her back on March 14, 1997 led to her subsequent lumbar radiculopathy symptoms which she experienced and the dis[c] herniation as shown by the MRI scan. However, I can state that it is medically probable in the medical-legal sense that the back pain experienced on March 14, 1997 was due to the moving of those boxes, caused by disc herniation and subsequent lumbar radiculopathy.”

A medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, but neither can the opinion be speculative or equivocal.⁶ Dr. Pcsolyar’s opinion that it is “entirely plausible” and “medically probable” that appellant injured her back moving boxes at work is speculative in nature and insufficiently probative to establish causal relationship, especially in light of the fact that the medical record contains no mention of even a possible employment-related component to appellant’s injury until October 21, 1999, more than two and a half years after the employment incident.⁷ The remainder of the medical evidence in the record consists of treatment notes dating from April 15, 1997 to August 25, 1998, a March 31, 1997 x-ray report showing degenerative disc disease and an April 29, 1997 MRI report showing a herniated nucleus pulposus at L4-5. While these reports document the diagnosis and treatment of appellant’s back condition, they do not address appellant’s history of injury and do not provide an opinion on the causal relationship, if any, between that injury and her diagnosed conditions. As appellant has not submitted sufficient medical evidence to meet her burden of proof, the Office properly denied her claim.

⁶ *Roger Dingess*, 47 ECAB 123 (1995).

⁷ *Alberta S. Williamson*, 47 ECAB 569 (1996).

The decisions of the Office of Workers' Compensation Programs dated May 2 and January 20, 2000 and October 6, 1999 are hereby affirmed.

Dated, Washington, DC
May 25, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member