

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ARIZONA WILSON and DEPARTMENT OF DEFENSE,  
DEFENSE LOGISTIC AGENCY, Chicago, IL

*Docket No. 00-2434; Submitted on the Record;  
Issued October 2, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a low back injury on April 19, 1988 in the performance of duty.

On January 19, 1993 appellant, then a 50-year-old contract management assistant, filed a notice of traumatic injury alleging on April 19, 1988 a coworker assaulted her, stabbing her in the right ankle with enough force to move her leg and injure her lower back.<sup>1</sup> By decision dated February 26, 1993, the Office found that appellant had filed a timely claim and that she had established that the assault occurred as alleged. However, the Office found that appellant failed to submit sufficient medical opinion evidence to establish a causal relationship between her diagnosed back condition and her accepted employment incident. The Office, therefore, denied appellant's claim. Appellant requested an oral hearing and by decision dated April 7, 1994 and finalized April 8, 1994, the hearing representative affirmed the Office's February 26, 1993 decision. She appealed this decision to the Board. In an order dated May 3, 1997, the Board dismissed appellant's appeal finding that it was not timely filed.<sup>2</sup>

Appellant requested reconsideration in October 1997 and by decision dated December 3, 1997, the Office declined to reopen appellant's claim for consideration of the merits on the grounds that the reconsideration request was not timely filed and did not include clear evidence of error. Appellant appealed this decision to the Board. In its December 16, 1999 decision, the Board found that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on December 3, 1997 on the grounds that her request for reconsideration was not timely filed and did not contain clear evidence of error.<sup>3</sup>

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<sup>1</sup> Appellant had previously filed a claim alleging on April 8, 1988 she injured her low back when she twisted in her chair and felt a pop. The Office of Workers' Compensation Programs accepted appellant's claim for injury on April 8, 1988 for low back strain and found that appellant had no disability from this injury after April 15, 1988.

<sup>2</sup> Docket No. 95-1995.

<sup>3</sup> Docket No. 98-997.

Following the Board's December 16, 1999 decision, appellant requested reconsideration on March 21, 2000. By decision dated July 5, 2000, the Office reviewed appellant's claim on the merits and found that she had not submitted sufficient medical evidence to modify its prior decisions.

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a low back strain causally related to her April 19, 1988 employment injury.

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

In this case, appellant has established that she experienced the employment incident alleged to have occurred, the assault in April 1988. However, the Board finds that the medical evidence is insufficient to establish a causal relationship between her diagnosed condition and her accepted employment incident.

In support of her claim, appellant has submitted a series of reports from Dr. Raymond O. Pierce, Jr., Board-certified orthopedic surgeon. On October 30, 1990 Dr. Pierce stated that he treated appellant for low back pain beginning in May 1988. He did not provide a history of injury nor an opinion on the causal relationship between appellant's condition and her employment. On February 7, 1991 Dr. Pierce noted appellant's history as an injury on April 8, 1988 in the performance of duty. He diagnosed back strain. This report does not support a causal relationship between appellant's April 19, 1988 employment injury of assault and her continuing medical condition. Instead, Dr. Pierce attributes appellant's back strain to the April 8, 1988 twisting injury. This claim is not before the Board on appeal.

In a report dated March 5, 1993, Dr. Pierce again noted appellant's April 8, 1988 employment incident and further stated that she also related an injury on a later date during

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<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

which a lady struck her ankle causing her some more discomfort in her back and into her lower right extremity. He stated: [I]t was my interpretation then as it is now that this was not two separate episodes of injury, the initial injury was as described by the patient on April 8, 1988, and at the time of the second mishap she was still having difficulty with her lower back.” This report is not sufficient to meet appellant’s burden of proof in establishing that she sustained a second injury on April 19, 1988. Dr. Pierce indicates that it is his opinion that appellant had not recovered from the April 8, 1988 employment injury by April 19, 1988. He does not provide any medical reasoning in support of his conclusions and this report is not sufficient to meet appellant’s burden of proof.

On April 12, 1994 Dr. Pierce noted that based on appellant’s history her condition was work related. He diagnosed chronic low back instability from an unspecified on-the-job injury. Dr. Pierce stated that appellant’s symptoms arose from the job injury. This report is not sufficient to meet appellant’s burden of proof as Dr. Pierce does not describe the job injury to which he attributed appellant’s condition and as he does not explain how either of the specific events to which appellant attributed her low back condition could or would result in continuing symptoms after nearly six years. As Dr. Pierce’s reports do not contain a clear history of injury, an opinion that appellant’s condition is due to the April 19, 1988 employment injury and medical rationale explaining how and why he reached this conclusion, his reports are insufficient to meet appellant’s burden of proof.<sup>7</sup>

The July 5, 2000 decision of the Office of Workers’ Compensation Programs is hereby affirmed.

Dated, Washington, DC  
October 2, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>7</sup> The Board notes that the Office has not addressed the issue of whether appellant’s current condition is due to her April 8, 1988 employment injury in a final decision within one year of the date of appellant’s appeal to the Board on July 18, 2000. Therefore, the Board may not consider this issue on appeal; *see* 20 C.F.R. § 501.3(d)(2).