U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE Y. MOORE and FEDERAL DEPOSIT INSURANCE CORPORATION, DEPARTMENT OF SUPERVISION, Kansas City, MO

Docket No. 01-795; Submitted on the Record;
Issued October 18, 2001

DECISION and ORDER

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

The issue is whether appellant sustained an injury while in the performance of duty.

The Board has duly reviewed the case on appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained a work-related injury.

On January 4, 2000 appellant, then a 41-year-old file clerk, filed a claim for compensation alleging that, on December 16, 1999, she sustained a back sprain while in the performance of duty. The Office of Workers' Compensation Programs denied appellant's claim by decision dated June 13, 2000, finding that she failed to establish fact of injury. By decision dated November 8, 2000, the Office denied appellant's request for modification of its prior decision.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 are causally related to the employment injury."[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

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

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[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

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.[4] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[7] In its June 13, 2000 decision, the Office found that the incident occurred.

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.[8]

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.[9]

In this case, Dr. Eric Baker, a Board-certified internist, who examined appellant on December 30, 1999, stated that appellant could return to work with a restriction against lifting more than ten pounds. The physician did not provide a diagnosis of appellant's condition or an opinion on the causal relationship between her condition and her employment. Thus, his report is not sufficient to meet appellant's burden of proof. Further, the medical reports from Dr. Roman S. Enrique, a Board-certified internist who examined appellant on January 4, 2000 are also insufficient to meet appellant's burden of proof because Dr. Enrique provided no diagnosis and no opinion on the causal relationship between appellant's low back pain and her

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[4] *Elaine Pendleton, supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *Id.* at 255-56.

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

[9] *James Mack,* 43 ECAB 321 (1991).

employment. Appellant also submitted physical therapy treatment notes from January 5 to 19, 2000, which reflect evaluation and treatment of appellant's lower back. The evaluation by appellant's physical therapist is of no probative medical value because a physical therapist is not a physician under the Act and is not competent to give medical opinions.[10]

As appellant failed to submit the necessary medical opinion evidence, she failed to meet her burden of proof and the Office properly denied her claim.[11]

The decisions of the Office of Workers' Compensation Programs dated November 8 and June 13, 2000 are hereby affirmed.[12]

Dated, Washington, DC
October 18, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member

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[10] 5 U.S.C. § 8102.

[11] The Office requested additional factual and medical evidence from appellant by letter dated May 3, 2000.

[12] The Board notes that this case record contains evidence which was submitted subsequent to the Office's November 8, 2000 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35, 36 n. 2 (1952).