U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MEREDITH S. LINTER and DEPARTMENT OF THE ARMY, MARTIN ARMY COMMUNITY HOSPITAL, Fort Benning, GA

Docket No. 01-577; Submitted on the Record;
Issued September 26, 2001

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 developed a back condition in the performance of duty.

On May 15, 2000 appellant, then a 29-year-old paramedic, filed a claim alleging that she injured her back on May 13, 2000 when lifting a patient. Appellant stopped work on May 15, 2000 and returned on May 27, 2000.

In a letter dated July 5, 2000, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that the appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors. The record does not reflect that appellant responded to this request.

On August 11, 2000 the Office issued a decision and denied appellant's claim for compensation under the Federal Employees' Compensation Act.[1] The Office found that the medical evidence was not sufficient to establish that her medical condition was caused by employment factors.

By letter dated August 23, 2000, appellant requested reconsideration of the Office decision and submitted additional medical evidence. The medical evidence included emergency room treatment notes from May 13 and 15, 2000; sick slips from May 13 to 23, 2000; and a physical therapy note dated May 23, 2000. The treatment notes from May 13, 2000 indicated appellant was being treated for a back injury which occurred when she was moving a patient. The note indicated appellant denied any specific trauma. The May 15, 2000 note provided a brief history of appellant's injury and her symptomatology. The sick slips from May 13 to 23, 2000 note appellant was excused from work from May 13 to 15, 2000 and could return thereafter

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[1] 5 U.S.C. §§ 8101-8193.

with restrictions on lifting and standing. The physical therapy note indicated that appellant had been pain free for two days and her back pain had nearly resolved.

By decision dated November 1, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has not met her burden of proof in establishing that she developed a back condition in the performance of duty.

An employee seeking benefits under the Act has the burden of establishing the essential elements of her 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 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 her subsequent course of action.[6]

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.[7]

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

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

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

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

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

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

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.[8]

In the instant case, it is not disputed that appellant was lifting a patient in the course of her job. However, she has not submitted sufficient medical evidence to support that a condition has been diagnosed in connection with the employment factor and that any alleged back condition is causally related to the employment factors or conditions.

On July 5, 2000 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit any medical report from an attending physician addressing how specific employment factors may have caused or aggravated her back condition. The only medical records submitted by appellant were emergency room treatment notes from May 13 and 15, 2000; and a physical therapy note dated May 23, 2000. The treatment notes from May 13, 2000 indicated appellant was being treated for a back injury which occurred when she was moving a patient and documented appellant's subjective complaints. The May 15, 2000 note provided a brief history of appellant's injury and her symptomatology. In neither of these records is there a rationalized opinion regarding the causal relationship between appellant's back condition and the factors of employment believed to have caused or contributed to such condition.[9] The records merely indicate appellant's symptoms without any discussion as to causal relationship. Therefore, these reports are insufficient to meet appellant's burden of proof. Appellant also submitted a physical therapy note which indicated appellant had been pain free for two days and her back pain was nearly resolved. However, such reports are not considered medical evidence as a physical therapist is not considered a physician under the Act.[10]

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

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

[9] *See Theron J. Barham,* 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

[10] *See* 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. The term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary); *see also Charley V.B. Harley,* 2 ECAB 208, 211 (1949) (where the Board has held that a medical opinion, in general, can only be given by a qualified physician).

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.[11] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant's claim for compensation.[12]

The decisions of the Office of Workers' Compensation Programs dated November 1 and August 11, 2000 are affirmed.

Dated, Washington, DC
September 26, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

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

[12] With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a).