U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELINDA POTTER and DEPT OF VETERANS AFFAIRS,
Dept. of Veterans Affairs, Providence, RI

Docket No. 02-555; Submitted on the Record;
Issued August 2, 2002

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof to establish that she sustained an employment-related injury to her back, arms and knees on May 1, 2001.

The Board finds that appellant has not established that she sustained an employment-related injury.

On May 1, 2001 appellant, then a 52-year-old housekeeping aide, filed a notice of traumatic injury and claim for compensation (CA-1) alleging that an increase in her workload caused extreme pain in her back, arms and knees. She alleges that she was ordered to perform an extensive list of cleaning duties on 11 buildings every shift, double the usual workload for 1 individual. Appellant was ordered to wear a backpack-mounted vacuum cleaner despite her complaints that she was physically unable to do so. In addition, she said she felt humiliated and discriminated against by having all male supervisors and work group make her, the only female, work in such a demeaning manner.

Appellant's medical history includes an accepted claim for post-traumatic stress disorder in 1995 and depression, not accepted as work related. Incidents of particular note include a nonaccepted needle-stick injury in 1997, being the victim of a robbery in 1999 and childhood abuse.

In a July 9, 2001 letter, the Office of Workers' Compensation Programs requested more information from appellant regarding her traumatic injury claim and informed her that at least some of her allegations are better suited for an occupational disease claim and explained how to pursue that type of claim.

No additional evidence was received from appellant.

In an August 10, 2001 decision, the Office denied the claim finding the medical evidence insufficient to establish an injury.

In a September 26, 2001 letter, appellant requested reconsideration.

In support of her reconsideration request, appellant submitted 121 pages of progress notes, some from as early as 1999, 17 pages of laboratory test results and 12 pages of radiology results.

The progress notes are reviews from appellant's individual and group psychotherapy sessions and are signed by a John Parson, Psychologist and Ph.D. In a January 11, 2001 report, he diagnosed appellant with "severe and prolonged post-traumatic stress disorder, major depression, female climacteric state, carpal tunnel syndrome, other disorders of bone and cartila, tobacco use disorder and alcohol dep nec/nos-unspec." In a May 2, 2001 progress note, he wrote "[Appellant] is having considerable difficulty with depression and anxiety. She is feeling overwhelmed with work."

In a May 9, 2001 letter to appellant's supervisor, Dr. Parson wrote "[appellant] is experiencing significant anxiety and depression. I am recommending that she remain out of work from Monday, May 7 until Monday, May 28, 2001."

In a May 22, 2001 report, Dr. Aminadav Zakai, wrote:

> "[Appellant] is under my care at the [employing establishment]. In 1997 [appellant] had a job-related needle stick injury resulting in an adverse drug reaction. She experiences extreme work-related stress and aggravation of her carpal tunnel syndrome, joint pain and arthritis. Her abilities to perform her duties as a housekeeper at the Providence CA have been severely compromised."

In a May 29, 2001 report, Dr. Zakai stated: "[appellant] is under my care at the [employing establishment]. Due to her ongoing medical conditions [appellant] will remain on a medical leave indefinitely."

A July 3, 2001 progress note reviewed by Dr. Zakai said:

> "[Appellant] is a 52-year-old veteran who has not worked since May 1, 2001 due to her ongoing pain, anxiety and depression. [Appellant] suffers from carpal tunnel, joint pain, arthritis and degenerative bone and cartilate disease. Pt is unable to work or engage in any activities due to her limitations. She does very little in the way of household chores. Her husband does all the lifting, carrying, sweeping and vacuuming. He also does all the driving as this inflames [appellant's] knee as well as the shopping. She has daily panic attacks and hides in the trunk of her car three to four times a week to hide where she feel safe. She continues to take her medication as prescribed and gets some relief from this. [Appellant] reports ongoing intrusive imagery, nightmares, isolation, avoidance, sleep disturbances, hypervigalence, exaggerated startle response and decreased concentration related to her past abuse history. More recently pt was robbed at an ATM (1999) which exacerbated her symptoms. In 1993 she was participating in a hostage drill at the [employing establishment] and was acting out the part of a hostage. When she got grabbed from behind her neck her trauma history came back and she was hospitalized for one week due to symptoms of post-traumatic

stress disorder and depression. She has been in and out of outpatient treatment to include individual and group psychotherapy, psychopharm. Tx, group tx and case management. [Appellant] also suffered from a needle stick in 1997 resulting in adverse drug reaction."

In an October 31, 2001 letter, Dr. Zakai stated:

"[Appellant] has been under my care since December of 1999 for the treatment of post-traumatic stress disorder and major depression. Increased demands on the job caused significant stress increasing her symptoms of post-traumatic stress disorder and depression. [Appellant] is unable to tolerate typical job-related stress due to her post-traumatic stress disorder and should be considered totally and permanently disabled."

In a December 6, 2001 decision, after a merit review, the Office denied appellant's claim finding the medical evidence insufficient. Specifically, the Office found the medical evidence lacked any discussion on how a traumatic injury occurred in April or on May 1, 2001. The Office found there was also no description or discussion in the medical evidence of employment duties that may have led to a traumatic injury. Finally, the Office found almost all the medical evidence focused on her emotional condition, yet she had not filed a claim for an occupational disease.

The Board finds that appellant has not met her burden of proof to establish she sustained a traumatic injury on or around May 1, 2001.

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 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

Traumatic injury means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence. The injury must be caused by a specific event or incident, or series of events or incidents within a single workday or work shift.[4]

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[4] *William Taylor*, 50 ECAB 234 (1999).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] The term "injury" as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[7]

In her Form CA-1, appellant discussed physical pain and in her back, arms and knees resulting from an increase in her work duties. Yet none of the medical evidence submitted discusses the pain or its causes and causally relates them to her employment responsibilities.

Dr. Zakai, in his July 3, 2001 progress note, discusses that appellant suffers from carpal tunnel, joint pain, arthritis and degenerative bone and cartilate disease, but he never causally relates them with a rationalized discussion to her employment factors.

The medical evidence discusses appellant's emotional condition but lacks any discussion about how the changed work assignments contributed to or aggravated her previous conditions of depression, anxiety and post-traumatic stress disorder. This type of explanation is especially important because the post-traumatic stress disorder condition was work related, while the depression and anxiety were not. In addition, rationalized medical reports are critical to appellant meeting her burden of proof because appellant had a long history of carpal tunnel and other physical conditions as well that preexisted her CA-1 claim. It is important for the medical evidence to discuss how the alleged work factors impacted these preexisting conditions. Finally, there is no medical evidence describing a traumatic injury.

Due to these insufficiencies in the medical evidence appellant has not established that she actually experienced an injury as she described in her CA-1 or that the alleged incident is causally related to her inability to work.

[5] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[6] *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[7] *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

The decisions of the Office Worker's Compensation Programs dated December 6 and August 10, 2001 are hereby affirmed.

Dated, Washington, DC
August 2, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member