

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHLEEN M. FERNANDEZ and DEPARTMENT OF VETERANS
AFFAIRS, TOGUS VETERANS HOSPITAL, Togus, ME

*Docket No. 01-1565; Submitted on the Record;
Issued June 19, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof to establish a work-related back condition after January 19, 2000.

The Board finds that appellant did not meet her burden to establish that her back condition after January 19, 2000 was causally related to factors of her employment.

On January 19, 2000 appellant, a 46-year-old nurse with a history of degenerative disc disease and several accepted employment injuries, filed a Form CA-2a, notice of recurrence of disability, relating to an accepted back condition injury of August 26, 1999. After consultation with the Office of Workers' Compensation Programs, appellant changed her claim to a CA-1 on April 21, 2000 and the claim was developed on that basis.

In the CA-1 appellant wrote that her "pain never resolved from August 26 injury ... while transferring pt [patient] out of unit via w/c -- developed numbness on her right leg and foot." In response to a request for further information, appellant wrote "on Jan[uary] 19, 2000 I was performing my regular nursing duties, which include lifting patients up in bed and frequent bending and twisting ... later I noticed numbness and tingling in my right foot."

In the Code of Federal Regulations, a recurrence of disability is defined as "an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness." Traumatic injury is defined as "a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected."¹ In light of appellant's statements, in particular the fact that she was

¹ 20 C.F.R. § 10.5

lifting a patient on January 19, 2000 and bending and twisting, the development of this claim as a traumatic injury, not as a recurrence, was appropriate.

There is no dispute regarding appellant's activities on January 19, 2000 that she was lifting patients and bending and twisting; therefore, the critical issue is whether appellant has established that the employment incident caused a personal injury.

The medical evidence appellant submitted along with her claim includes treatment notes from Dr. Michael Regan, Board-certified in orthopedic surgery, a report from Dr. James Pisini, D.O. and Board-certified in anesthesiology with a specialty in pain medicine, and from Dr. Barry Kutzen, Board-certified in radiology. The notes of Dr. Regan, appellant's treating physician, describe appellant's symptoms and contain a diagnosis of degenerative disc disease, but do not reflect knowledge of the incident on January 19, 2000 or discuss causal relationship. In a Form CA-20, attending physician's report, Dr. Regan left blank the section that asked if he believed the condition was caused or aggravated by an employment activity. On physical examination Dr. Pisini found appellant has "no motor abnormalities to her lower extremities nor any sensory changes. She is able to heel and toe stand with full range of motion." He diagnosed a herniated nucleus pulposus to the right at L5-S1.

Dr. Kutzen's February 22, 2000 report stated that his impressions were:

"1. Chronic calcified dis[c] herniation at L5-S1, eccentric on the right and significantly encroaching upon the neural exit foramina.

"2. Shallow eccentric circumferential bulging of the L4-5 dis[c], eccentric on the right.

"3. Anomalous development of the L3-4 posterior arch without complicating features.

"4. Anomalous development of the L5-S1 arch with extensive hypertrophic osteoarthoropathy of the left facet joint."

In a letter dated September 25, 2000, the Office notified appellant that the evidence was insufficient to meet her burden of proof and gave her 30 days to submit additional information, including a physician's opinion supported by medical explanation as to how the reported work incident caused or aggravated the claimed injury. Appellant did not respond to this letter.

In a decision dated October 27, 2000, the Office denied the claim finding that appellant "failed to submit a medical report that included an accurate history of what happened on January 19, 2000, a definitive diagnosis, and the physician's well-reasoned opinion on whether and how you suffered a diagnosed medical condition that was causally related to the injury you alleged as occurring on January 19, 2000."

In a letter dated November 13, 2000, appellant requested reconsideration. Along with her request, appellant submitted a personal statement dated November 3, 2000, medical treatment notes from Dr. Regan; a CA-20 medical report from Dr. Regan; a medical report from

Dr. Dorothy Thayer, Board-certified in family practice, dated October 20, 2000, medical treatment notes from Dr. Thayer and medical report from Dr. Pisini dated April 27, 2000.

After conducting a merit review, the Office denied modification, in an order dated February 9, 2001, finding none of the medical evidence submitted describes the events of January 19, 2000 that caused the medical condition diagnosed.

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 she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.³ 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.⁴ The evidence required to establish causal relationship is medical opinion evidence, based on complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵

The Board finds that appellant has not met her burden of proof to establish a compensable claim. Specifically, the medical evidence in the record is not based on a complete factual and medical background and does not establish a causal relationship between appellant’s medical condition and the employment factors appellant described as occurring on January 19, 2000. The reports submitted by Drs. Regan, Pisisni and Kutzen all diagnosed herniated disc and recognized appellant had a history of back problems; but none demonstrated awareness of the specific incident on January 19, 2000 that led directly to appellant filing her claim. Also, none of these reports discuss a causal relationship between the incident of that day and appellant’s medical condition.

On reconsideration appellant resubmitted the April 27, 2000 report from Dr. Pisini. She also submitted treatment notes from Dr. Regan dated August 1, 2000, where he again discusses appellant’s medical condition and treatment plan but makes no mention of the incident on January 19, 2000 or the causal relationship between the incident and appellant’s medical condition. Dr. Thayer’s report diagnoses chronic degenerative disc disease with intermittent radiculopathy. She writes that “on January 19, 2000 you did not have another acute injury, but rather reported an exacerbation in your chronic pain from prior injuries.”

² *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).

³ *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).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989); 20 C.F.R. § 10.5(a)(14).

⁵ *Ronald C. Hand*, 49 ECAB 113 (1997); *Earl David Seal*, 49 ECAB 152 (1997).

Dr. Thayer's report does not establish that she has knowledge of the January 19, 2000 incident that appellant has described in support of her claim. In her Form CA-1 and supporting documents, appellant describes lifting a patient(s) and bending and twisting on that day. Because Dr. Thayer's report fails to mention these activities and causally relate them to appellant's medical condition her report is insufficient to meet appellant's burden of proof.

The decisions of the Office of Workers' Compensation Programs dated October 27, 2000 and February 9, 2001 are hereby affirmed.

Dated, Washington, DC
June 19, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member