

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of EVA M. STONE and DEPARTMENT OF HEALTH & HUMAN SERVICES,
Rockville, MD

*Docket No. 00-2628; Submitted on the Record;
Issued March 13, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty.

On November 15, 1999 appellant, then a 59-year-old program analyst, filed a notice of traumatic injury and claim for compensation, alleging that on November 5, 1999 as the result of lifting boxes of binders to prepare notebooks for an upcoming council meeting, she developed a hernia on the left side of her stomach and would need surgery. On the reverse side of the CA-1 form appellant's supervisor noted that he was notified of the incident on November 17, 1999 and noted that appellant stopped work on November 22, 1999. He checkmarked "yes" the employee was injured in the performance of duty.

In support of her claim, appellant submitted a December 7, 1999 attending physician's report from Dr. Bijan Bahmanyar, Board-certified in general surgery, who noted that appellant was first examined on November 9, 1999 and diagnosed appellant with a hernia in her left groin. He noted that appellant was scheduled for surgery and totally disabled until December 24, 1999.

Appellant also submitted a December 27, 1999 medical slip from Dr. Lita Lerma who noted that appellant was under her care and totally incapacitated from December 27 to 31, 1999 and could return to work on January 3, 2000.

By letters dated February 17, 2000, the Office of Workers' Compensation Programs requested that appellant and the employing establishment submit additional evidence including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated her claimed injury.

In response, appellant submitted some medical bills and duplicate copies of Dr. Bahmanyar's attending physician's report and Dr. Lerma's medical slip.

By decision dated March 30, 2000, the Office denied appellant's claim for compensation on the grounds that appellant failed to establish fact of injury. The Office specifically found that the evidence was sufficient to establish that the work incident occurred at the time, place and in the manner alleged, however, there was insufficient medical evidence to establish that appellant sustained an injury causally related to the work incident.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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 essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. 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.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁵ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

In this case, the Office concluded that the evidence of record was sufficient to establish that a lifting incident occurred on November 5, 1999 as alleged. Because an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,⁶ the Board finds that the lifting incident occurred on November 5, 1999. Notwithstanding, the Board also finds that appellant has submitted insufficient evidence to establish a causal relationship between her hernia and an employment incident of lifting boxes of binders.

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *Id.*

⁶ *Linda S. Christian*, 46 ECAB 598 (1995).

To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his or her injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁷

In support of her claim, appellant submitted an attending physician's report from Dr. Bahmanyar, her attending physician and a medical slip from Dr. Lerma. Dr. Bahmanyar noted that appellant needed surgery for a hernia in her left groin area but checked "no" as to whether he believed appellant's condition was caused or aggravated by the employment activity described. Neither Drs. Bahmanyar nor Lerma offered an opinion on the cause of appellant's hernia. Because neither physician discussed that appellant was required to lift boxes of binders in her job and did not offer a rationalized opinion attributing appellant's hernia to the lifting of the box of binders, their reports are insufficient to establish causal relationship.

Despite being advised of the deficiencies in her medical evidence appellant failed to submit a rationalized opinion addressing the issue of causal relationship and, therefore, failed to establish fact of injury. As appellant has failed to establish fact of injury, she is not entitled to compensation.

The March 30, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 13, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member

⁷ See *Victor J. Woodhams*, *supra* note 3.