U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHRYN FREDERICKSDORF and U.S. POSTAL SERVICE, SCHUYLKILL POST OFFICE, Philadelphia, PA

Docket No. 01-2219; Submitted on the Record;
Issued May 1, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
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 January 23, 1999.

On October 16, 1999 appellant, then a 58-year-old mailhandler, filed a notice of traumatic injury alleging that on January 23, 1999, she had a sharp pain on her left side and down her left leg when she was pushing an APC cage. Appellant submitted a statement from Dr. Curtis W. Slipman, Board-certified in physical medicine and rehabilitation, indicating that he had first treated her on January 26, 1999 and diagnosing lumbar discogenic pain. She also submitted several rehabilitation reports, which indicated that she had lumbar discogenic disease. In a report from Dr. Slipman dated January 26, 1999, he stated: "The patient's pain began spontaneously three days ago. The pain developed after the patient was lifting heavy loads at work." In a second report dated January 26, 1999, Dr. Slipman indicated that appellant was experiencing the symptomology of an annular tear, secondary to lumbar discogenic disease. In a March 12, 1999 report, he stated that appellant no longer had any significant pain in her lower back and diagnosed resolved lumbar discogenic pain.

By decision dated December 13, 1999, the Office denied appellant's claim, as the evidence was not sufficient to establish that her condition was caused by the January 23, 1999 incident. Appellant requested a hearing which was held on May 4, 2000. After the hearing appellant submitted a June 1, 2000 report from Dr. Slipman, indicating that appellant sustained an acute annular tear to her lower back which had largely resolved, but that she still experienced some moderate low grade background pain. He stated:

> "Based upon the information [appellant] has provided me, it can be stated with a reasonable degree of medical certainty that the symptoms and subsequent lumbar discogenic pain is related to the work injury I alluded to in the earlier portion of my report."

By decision dated July 24, 2000, the hearing representative set aside the Office's December 13, 1999 decision and remanded the case to the Office for further development of the medical evidence.

The Office requested that Dr. Slipman provide copies of medical records dated after November 1999, a copy of a December 1999 magnetic resonance imaging (MRI) scan report and a narrative statement with medical rationale relating appellant's degenerative disc disease to the January 23, 1999 injury. He submitted copies of reports dated November 29 and December 15, 1999 and August 25, 2000. Dr. Slipman indicated in his December 15, 1999 report that an MRI scan performed in December 1999 demonstrated degenerative disc disease and disc desiccation at L1-2 and L4-5, but did not include the actual report. Dr. Slipman advised appellant to stop lifting more than 10 pounds at work as he stated it was exacerbating her symptoms. Dr. Slipman did not provide any opinion as to causal relationship in his reports between appellant's degenerative disc disease and her work injury.

By decision dated November 30, 2000, the Office denied appellant's claim as the medical evidence of record was insufficient to establish causal relationship between appellant's diagnosed condition and the January 23, 1999 injury. Appellant requested an oral hearing, which was held on April 24, 2001. Appellant's representative expressed his frustration with obtaining medical reports from Dr. Slipman and requested a second opinion examination.

Dr. Slipman submitted a report dated December 18, 2000. He stated:

> "I have not opined that there is a causal relationship between work activity of January 23, 1999 and the condition for which I treated [appellant]. In the absence of a specific event that would have triggered [appellant's] symptoms, one can only state that the type of work she performs predisposes her to an annular tear. Again, I have not stated that there is a cause relationship between her work activity of January 23, 1999 and the development of lumbar discogenic pain."

By decision dated June 14, 2001, issued on June15, 2001 the hearing representative affirmed the Office's November 30, 2000 decision.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on January 23, 1999.

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

[1] 5 U.S.C. §§ 8101-8193.

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

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

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or 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 a personal injury.[5]

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. 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.[6]

In this case, the Board accepts that the January 23, 1999 incident occurred, but finds that the medical evidence of record is insufficient to establish causal relationship. Appellant's attending physician, Dr. Slipman, first diagnosed appellant with lumbar discogenic pain on January 26, 1999. In a report dated the same day, he indicated that appellant was experiencing the symptomology of an annular tear, secondary to lumbar discogenic disease. Dr. Slipman later indicated that the acute annular tear in appellant's lower back had largely resolved, but that she still experienced some moderate low grade background pain. He also indicated that in his December 15, 1999 report that a December 1999 MRI scan demonstrated degenerative disc disease and disc desiccation at L1-2 and L4-5. It is appellant's burden of proof to submit a rationalized medical report stating that the annular tear or degenerative disc disease was caused or aggravated by the January 23, 1999 injury. Dr. Slipman stated in his June 1, 2000 report: "Based upon the information [appellant] has provided me, it can be stated with a reasonable degree of medical certainty that the symptoms and subsequent lumbar discogenic pain is related to the work injury." This statement by Dr. Slipman is insufficient to establish causal relationship as it is speculative and not supported by medical rationale. He does not explain how or why appellant's lumbar discogenic pain was caused by the January 23, 1999 work injury, or what specific factors of her employment attributed to her condition. In his December 18, 2000 report, Dr. Slipman states that he has not opined that there is a causal relationship between appellant's work activity of January 23, 1999 and appellant's condition. Dr. Slipman only stated that in the absence of a specific event that would have triggered appellant's symptoms, "one can only state" that the type of work appellant performs predisposes her to an annular tear. This statement is

[3] *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

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

[5] *Id*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[6] *Supra* note 3.

insufficient to establish causal relationship, as it is not a clear medical opinion relating appellant's annular tear to the work injury. At the end of his December 18, 2000 report, Dr. Slipman restated that he was not indicating that there is a causal relationship between appellant's work activity on January 23, 1999 and the development of appellant's lumbar discogenic pain. The record does not contain any other rationalized medical opinion evidence relating appellant's lumbar discogenic pain and degenerative disc disease to the employment incident on January 23, 1999.[7]

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.

The June 15, 2001 and November 30, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
May 1, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[7] Appellant's representative argues that appellant should have been referred to an impartial medical examiner. The Board notes that the hearing representative, in her July 24, 2000 decision, remanding the case to the Office for further medical development, noted that the Office could either: (1) further develop the medical evidence by obtaining more information from Dr. Slipman; or (2) obtain copies of the December 1999 MRI scan and refer appellant for a further medical examination.