U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BETTY J. SMITH and U.S. POSTAL SERVICE, FEDERAL DEPOSIT INSURANCE CORPORATION, Carrollton, TX

Docket No. 02-149 Submitted on the Record;
Issued October 29, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on March 6, 2001.

On March 6, 2001 appellant, then a 62-year-old secretary, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). She alleged that on that date, her supervisor called her into his office and as she entered she fell near his desk injuring both knees, the right shoulder, arm, wrist and neck on the right side. Appellant also alleged that she had pain underneath the stomach and her whole body was sore. She indicated that she did not know exactly what happened. Appellant's supervisor added that it appeared that appellant did not pick up her feet as there were no obstacles in her path when she fell. She stopped work on March 6, 2001.

In a March 6, 2001 authorization for treatment form, appellant's supervisor indicated that it appeared that appellant tripped on the carpet and fell to the floor adjacent to the desk in his office.

In a March 14, 2001 report, Dr. Charles E. Neagle III, a Board-certified orthopedic hand surgeon, indicated that appellant was seen and he wanted to do a cortisone injection for carpal tunnel syndrome to see if they could improve her symptoms.

In a March 14, 2001 report, Dr. Phillip M. Graehl, a Board-certified orthopedic surgeon, noted that appellant was at work when she inadvertently slipped and fell injuring her right shoulder, hand and wrist, both knees. He noted that the day following the injury she had progressive onset of severe lumbar pain. Dr. Graehl stated that appellant complained of limited range of motion and pain in the right shoulder and right wrist, pain in both knees, and pain in the lumbosacral junction in a bandlike distribution posteriorly across the low back. He indicated that appellant denied any paresis or paresthesias and her shoulder pain appeared to be most prominent in the pectoralis region, the dorsum of the right wrist and the mid palm region of the

right hand. Dr. Graehl diagnosed a fall with traumatic strain of her right shoulder, possible rotator cuff tear, sprain of the right knee, status post right total knee arthroplasty, strain of the left knee with underlying arthrosis of the left knee and exacerbation of a disc problem due to the injury. He stated her status was post triscaphe fusion of the right wrist with wrist sprain and possible avulsion fracture of the dorsum of the carpus, lumbar strain, post-traumatic shoulder strain with possible pectoralis tear and wrist sprain with avulsion fracture following triscaphe fusion. Dr. Graehl also diagnosed: knee sprain, possible medial collateral ligament strain of the left knee with underlying arthrosis of the left knee and knee strain of the right knee following knee replacement.

In letters dated April 10, 2001, the Office of Workers' Compensation Programs advised appellant of the additional factual and medical evidence needed to establish her claim and requested that she submit such. Appellant was advised that submitting a rationalized statement from her physician addressing any causal relationship between her claimed injury and factors of her federal employment was crucial. She was allotted 30 days to submit the requested evidence.

Appellant responded to the April 10, 2001 letters on April 13, 2001. In response to the Office's request for a description of how the incident occurred, appellant stated that her supervisor called her into his office. When she came in, she went around the desk and fell flat. She stated that it "happened so fast, she wasn't sure what happened except that she fell flat down."

In an April 23, 2001 statement, appellant stated that her supervisor, Vernon P. Lynd, called her on the telephone and asked her to come into his office. She noted that, when she walked into the office, Mr. Lynd and Patrick Shute were both sitting in Mr. Lynd's office. Appellant explained that she walked around Mr. Lynd's desk to see what he wanted her to do and she fell face down. She stated that she was embarrassed but her left knee was hurting so badly that she wanted to cry. Appellant indicated that both Mr. Lynd and Mr. Shute immediately asked if they could help her up but her knee was hurting so badly that she could not get up until the pain subsided. She was taken to the nurse's office and sent home. Appellant stated that the next day, her right shoulder was hurting worse than her knee, along with her right arm and wrist. She indicated that she stayed in bed with ice on different parts of her body until she was able to get up and go the emergency room, where x-rays were taken and where she was also given a splint on her wrist and arm. Approximately three to four days later, appellant stated that she could not walk and her lower back around the tailbone, pelvic area and hip hurt so badly that she could not sit or walk. She stated that she was told that she could not be seen for her lower back and she could only be seen for her shoulder and knee. Appellant indicated that she was not allowed to be seen for her wrist even though the doctor thought that she might have a chipped bone there.

In support of her claim, appellant provided x-rays of her knees, wrist and scapula.

By decision dated May 10, 2001, the Office found that the evidence of record was insufficient to establish that appellant sustained an injury in the performance of duty.

By letter dated May 12, 2001, appellant requested reconsideration. In support of her request, she stated that on March 6, 2001 at approximately 3:00 p.m. she was called into her

supervisor's office. Appellant stated that, as she went around his desk, she tripped with her left foot on the carpet. She stated that she tried to break her fall and grabbed for the desk and hit her right arm and right shoulder on the conference table on her way down. Appellant indicated that all of her weight went down on her left knee while trying not to hurt her right knee. She stated: "[t]he pain on my left knee was so great that I could n[o]t move for a while. Mr. Lynd and Mr. Shute was in the office at the time and saw me fall and after the pain subsided a little I did not just simply fall, I tripped on the carpet. I have not had a fall since 1986, which resulted in a total knee replacement. I do pray that you will reconsider my claim and authorize medical treatment for me."

By letter dated July 2, 2001, the Office advised the employing establishment that a response was requested regarding appellant's request for reconsideration.

By response dated July 13, 2001, the employing establishment controverted appellant's claim on the grounds that her fall was idiopathic. They stated that appellant was walking in an unobstructed area with no unsafe working conditions when she experienced an apparent idiopathic fall and that she had not presented evidence to support her claim.

The Office received an August 3, 2001 statement from Mr. Shute on August 7, 2001. Mr. Shute advised that on the date of the incident, he was sitting in Mr. Lynd's office with his back to the door. When appellant entered, she tripped before she reached his chair and fell face down on the carpet.

In an August 7, 2001 decision, the Office denied appellant's request for modification based on a merit review of the claim.

The Board finds that this case is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of her claim.[1] When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.[2]

The Board finds that the factual evidence of record is sufficient to establish that appellant experienced a fall at work occurring at the time, place and in the manner alleged.

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case

[1] 5 U.S.C. §§ 8101-8193.

[2] *See* generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); *see also* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a), (q), (ee) ("occupational disease or illness" and "traumatic injury" defined).

has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[3]

Appellant's account of the events of March 6, 2001 is largely confirmed by her supervisor, and the other witness, Mr. Shute. All parties agree that appellant was called into her supervisor's office and tripped and fell after she had entered. Although, the specifics provided differed slightly in the explanations of the manner in which appellant fell, these inconsistencies are not sufficient to impugn the validity of appellant's claim.[4]

Causal relationship is a medical issue[5] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[8]

It is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.[9] Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related injury on March 6, 2001.

The Office should prepare a statement of accepted facts regarding the March 6, 2001 injury, based on statements from appellant, her supervisor and Mr. Shute and should submit this statement to appellant's treating physicians, Drs. Neagle And Graehl, to obtain a medical opinion on the causal relationship between appellant's diagnosed conditions and the March 6, 2001 incident. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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[3] *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984).

[4] There is no dispute appellant was in the course of employment at the time of her injury. The only question is what specifically caused the injury. Because the risk appears to have been neither distinctly associated with the employment nor personal to appellant, the risk was neutral and, having arisen in the course of appellant's employment, the injury caused thereby is compensable. *See Edward P. Prior*, 45 ECAB 288 (1994).

[5] *Mary J. Briggs*, 37 ECAB 578 (1986).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *Katherine J. Friday*, 47 ECAB 591 (1996).

The August 7 and May 10, 2001 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this opinion.

Dated, Washington, DC
October 29, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member