U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN TARR and DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Fitchburg, MA

Docket No. 03-1727; Submitted on the Record;
Issued August 26, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant established that she sustained an injury in the performance of duty.

On April 1, 2002 appellant, then a 37-year-old data transcriber, filed a notice of traumatic injury alleging that on March 27, 2002 she injured her left knee when she was jumping up and down after winning a raffle at work. In response to whether she was injured in the performance of duty, her supervisor replied "no" and stated: "[appellant] jumped up and down, her knee gave out, in response to winning a prize."

Appellant submitted an April 17, 2001 medical report unrelated to the claimed condition; a medical note from a physician with an illegible signature dated March 27, 2002 indicating a "left knee sprain;" a note from a person with an illegible signature indicating that she would be out of work from April 1 to 4, 2002 due to an injured left knee; a note from physician's assistant John Arsenault stating that she could return to work on April 8, 2002; and a report from Mr. Arsenault dated April 4, 2002 diagnosing "Grade I lateral collateral ligament sprain versus the differential to include meniscal tear." He noted that on approximately March 29, 2002 she was at work and won a lottery and in her excitement starting jumping up and down ad twisted her left knee and heard an audible "pop." Appellant also submitted physical therapy reports and doctor's bills.

By decision dated November 13, 2002, the Office of Workers' Compensation Programs denied appellant's claim for compensation on the grounds that she did not establish that she was injured in the performance of duty. The Office noted that the evidence was insufficient to establish that the event arose out of and in the course of employment or that an employment factor caused her condition.

Appellant disagreed with the Office's decision and requested reconsideration. She claimed that she was injured in a work-related raffle since it was held during regular work hours and was on federal property and did not occur during her lunch or break time and that the raffles

were held two to three times per week to raise money. Appellant's supervisor, Susan French, indicated in a conference call, that the raffles took place during regular work hours and not during break time and that the raffles were held on a weekly basis but probably not as frequently as two to three times per week. Ms. French noted that the raffle was work related as an agency-endorsed activity and that the raffle was for employee fund raising.

By decision dated February 6, 2003, the Office modified its previous decision in part, finding that the evidence established that the incident occurred in the performance of duty; however, that there was insufficient medical evidence to support a causal connection between the diagnosed left knee sprain and the incident on March 27, 2002.

The Board finds that appellant did not establish that she sustained an injury in the performance of duty.

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]

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 and 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] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[6]

The Board finds that the incident did occur at the time, place and in the manner alleged. Appellant's supervisor noted that the raffle, during which appellant hurt her left knee, was work

[1] 5 U.S.C. §§ 8101-8193.

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

[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*.

[6] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

related because it was an agency-endorsed activity for employee fund raising. Based on this evidence, the Office determined that the incident arose within the performance of duty.

However, the medical evidence is insufficient to establish that appellant's employment was the cause of her injury. Mr. Arsenault's April 4, 2002 report is the only report of record that addressed causal relationship. He indicated that appellant was at work and won the lottery and started jumping up and down when she twisted her left knee and heard an audible "pop." Mr. Arsenault report is of no probative value in establishing causal relationship; however, since a physician's assistant is not a "physician" within the meaning of the Act.[7] The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history of the employee whose claim is being considered.[8] Appellant also submitted physical therapy records to the Office. The reports of appellant's physical therapist are also of no probative value as a physical therapist is not a physician under the Act[9] and, therefore, is not competent to give a medical opinion.[10]

Appellant submitted a medical note from a physician with an illegible signature dated March 27, 2002 indicating a "left knee sprain," but the note does not contain an opinion on causal relationship. She also submitted a note from a person with an illegible signature indicating that she would be out of work from April 1 to 4, 2002 due to an injured left knee. However, it is unclear whether this note was signed by a physician and it does not contain an opinion of causal relationship. Appellant did not submit any medical evidence from a qualified physician addressing causal relationship.

Appellant alleges on appeal that her insurance company sends all of their patients to medical assistants and that the physical therapist is also licensed to evaluate a condition. Section 8101(2) of the Act[11] makes it clear; however, that the term "physician" only includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by the applicable state law. Appellant's argument is therefore, without merit.

An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.[12] To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of federal employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of

[7] *John H. Smith*, 41 ECAB 444 (1990).

[8] *Donald J. Miletta*, 34 ECAB 1822 (1983).

[9] 5 U.S.C. § 8101(2).

[10] *Id*.

[11] *Id*.

[12] *William S. Wright*, 45 ECAB 498 (1993).

appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed condition.[13]

Consequently, appellant has not established her claim as she has submitted no medical evidence supporting that the employment incident on March 27, 2002 caused her diagnosed left knee sprain.

The February 6, 2003 and November 13, 2002 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC
August 26, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[13] *Id*.