

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELINDA L. DIXON and U.S. POSTAL SERVICE,
POST OFFICE, Belvidere, IL

*Docket No. 03-2018; Submitted on the Record;
Issued December 2, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

On March 23, 2001 appellant, then a 30-year-old clerk, filed a claim for traumatic injury alleging that on December 27, 2000 she slipped on ice "and jerked hard" to prevent falling, causing a strain in her lower back and right buttocks. She stopped work on January 30, 2001.

By decision dated May 10, 2001, the Office of Workers' Compensation Programs denied appellant's claim for continuation of pay on the grounds that she failed to file her claim within 30 days of the alleged incident. On that same day the Office advised appellant what evidence she needed to support her claim.

In a report dated February 1, 2001, Dr. Xamnan Tulyasathien, appellant's attending Board-certified orthopedic surgeon, stated that he treated appellant that day for her complaints of extreme pain in the right buttocks region running down her right side. Appellant related a December 2000 work-related incident when she started to slip on ice and jerked herself to prevent falling, which caused pain in her right buttocks. She related constant pain since that time and noted aggravation upon getting up from a sitting position or any bending or lifting activities. Appellant related numbness the day before in her foot along with pain from the buttocks to the thigh. Upon examination, her neck had no spasm at the paravertabral muscles at the cervical, dorsal or lumbar region, but had marked tenderness on palpation over the right iliolumbar junction and sciatic notch region. Appellant had good flexion and extension, lateral flexion and rotation of the cervical spine without pain; she had full range of motion shoulders, elbows, wrists and fingers with good strength and no pain. Appellant's lumbar spine was also normal except for some slight pain at the right iliolumbar junction region on lateral flexion and hyperextension. Her straight leg raising was negative bilaterally, except with pain in the right buttocks at 60 degrees bilaterally. There was good sensation to touch of both lower extremities from the hips down to the toes. Dr. Tulyasathien found good muscular strength in her hips, knees and ankles against resistance and good circulation in her lower extremities. The physician further

found normal and equal deep tendon reflexes. He noted negative lumbar and pelvis x-rays. Dr. Tulyasathien advised that appellant had lumbar strain with right radiculitis and referred her to physical therapy, an exercise program and heat. He also placed her on total disability for two weeks due to lumbar strain with radiculitis.

On February 15, 2001 Dr. Tulyasathien advised that appellant walked with a normal gait, that her back had no spasm of the paravertabral muscles at the cervical and dorsal regions but that she had tenderness at the lumbosacral region and more at the right sciatic notch region. Appellant had good flexion and extension, lateral flexion and rotation of the cervical spine without any pain. He noted some limitation of flexion and extension, lateral flexion and rotation of the lumbar spine with motion at the hip. Appellant's straight leg raising was negative bilaterally, but some pain was noted at the right iliolumbar region. She had good sensation and strength in the lower extremities bilaterally. Deep tendon reflexes were normal and equal bilaterally. On February 20, 2001 Dr. Tulyasathien placed appellant on total disability from February 1 to 23, 2001, based on lumbar strain. On February 22, 2001 a magnetic resonance imaging scan (MRI) scan of the lumbar spine was unremarkable.

On February 23, 2001 Dr. Tulyasathien submitted a report that was essentially similar to his February 15, 2001 report, noting also that he discontinued physical therapy because it did not show much improvement. In his March 5, 2001 report, Dr. Tulyasathien released her to return to light duty with restrictions.

On March 13, 2001 appellant had an epidural injection at the L3-4 and L4-5 interspaces and on March 26, 2001 at the L4-5 interspace. A hip x-ray taken on April 5, 2001 was normal except for soft tissue calcification. A pelvis x-ray was also taken that day, which was read as normal. An April 9, 2001 MRI scan of the hip was normal.

In a report dated May 21, 2001, Dr. Chester Delacruz, a neurologist, stated that appellant had a probable neurapraxia at the right sciatic nerve secondary to her stretch injury. Dr. Delacruz ordered medications and scheduled a follow-up in four weeks. Appellant was released to return to work.

By decision dated June 12, 2001, the Office denied appellant's claim on the grounds that she failed to establish that her condition was caused by her employment.

Appellant, through counsel, requested an oral hearing.

By decision dated September 4, 2001, an Office hearing representative remanded the case to the Office. The Office was required to submit a signed statement from appellant's supervisor specifically addressing the issue of whether appellant advised her of the alleged December 27, 2000 incident immediately after it occurred. Appellant was requested to explain why she filed her claim late, inconsistencies in her statements and how she determined that December 27, 2000 was the date of injury. The Office hearing representative advised that the medical evidence submitted at that time included no reasoned opinion regarding a December 27, 2000 work-related injury.

In a report dated December 17, 2001, Joanne Lefheit, appellant's supervisor, stated that appellant first mentioned to her that she had slipped in the parking lot earlier in the week.

By decision dated January 16, 2002, the Office denied appellant's claim on the grounds that the medical evidence was insufficient to establish that her condition was caused by an injury while in the performance of duty.

On February 22, 2002 appellant, through counsel, requested an oral hearing.

By decision dated July 3, 2002, the Branch of Hearings and Review denied appellant's request for an oral hearing on the grounds that it was untimely filed.

On August 14, 2002 appellant, through counsel, requested reconsideration. In support of her request, appellant submitted an August 1, 2002 report from Dr. Tulyasathien, who stated that appellant related a work-related injury in early December 2000, when she twisted her back when she slipped on ice with constant radiating pain since that time. He described treatment of appellant beginning on February 1, 2001. Dr. Tulyasathien concluded: "In my opinion, her symptoms of back pain and right buttock pain down the right lower extremity was the result of the incident occurring in the early part of December 2000, when she jerked her back and hip."

By decision dated November 20, 2002, the Office denied modification of its prior merit decision. By letter dated April 11, 2003, appellant through counsel, requested reconsideration and submitted a narrative indicating that December 27, 2000, was an approximation of the date of her injury.

By decision dated July 13, 2003, the Office denied modification of the prior merit decisions.

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

To determine whether a federal 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 has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.¹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition, for which compensation is claimed.² An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident. As the Office did not dispute that the incident occurred at the time, place and in the manner alleged, the remaining issue is whether the alleged injury was caused by the employment incident.

In this case, Dr. Tulyasathien, appellant's attending Board-certified orthopedic surgeon, related her December 2000 work-related incident when she jerked herself while slipping on ice, causing pain in her right buttocks. However, neither this report dated February 1, 2001 nor in

¹ *John J. Carlone*, 41 ECAB 354 (1989).

² *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

any of his subsequent reports with the exception of his August 1, 2002 report, did Dr. Tulyasathien make a determination that appellant's condition was caused by the December 2000 work-related injury. To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.³ Absent such evidence, appellant failed to meet her burden of proof. With respect to his August 1, 2002 report, Dr. Tulyasathien reviewed appellant's history of injury stating that the work-related incident occurred in early December 2000. However, appellant had stated that her accident occurred on approximately December 27, 2000. The Board has long held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value.⁴ Further, Dr. DelaCruz, a consultant, speculated that appellant had a neurapraxia at the right sciatic nerve, which was secondary to her stretch injury. The Board has held that medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value.⁵ Appellant's reports are insufficient to establish her claim as Drs. Tulyasathien and DelaCruz failed to provide a rationalized medical opinion, based on an accurate factual background, explaining why and how appellant's employment conditions caused or aggravated any physical condition or resulted in her disability. As noted above, appellant must submit medical evidence supporting that her employment caused or aggravated her claimed medical condition. The Board, therefore, finds that appellant failed to establish that her condition is related to factors of her employment.

The decisions of the Office of Workers' Compensation Programs dated July 13, 2003 and November 20, 2002 are hereby affirmed.

Dated, Washington, DC
December 2, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

³ *Gary J. Watling*, 52 ECAB 278 (2001).

⁴ *Frank Luis Rembisz*, 52 ECAB 147 (2000).

⁵ *Ricky S. Storms*, 52 ECAB 349 (2001).