U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHIRLEY L. STANTIAL and U.S. POSTAL SERVICE,
POST OFFICE, Warren, OH

Docket No. 03-2156; Submitted on the Record;
Issued December 3, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether appellant has established that she sustained a lower back injury in the performance of duty on December 18, 2001.

Appellant, a 40-year-old letter carrier, filed a claim for a traumatic injury on December 18, 2001 alleging that she sustained a lower back injury when she slipped on a flight of steps in the performance of duty.

In a report dated April 18, 2002, Dr. P.F. Accordino, a chiropractor, noted appellant's history of injury and advised that she had sustained a right lumbosacral myospasm and right sciatic fixation. Dr. Accordino diagnosed sacroiliac sprain/strain. This report did not include a diagnosis of subluxation as demonstrated by x-ray.

On May 20, 2002 the Office of Workers' Compensation Programs advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked her to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office also informed appellant that a report from a chiropractor was not considered medical evidence unless it included treatment consisting of manual manipulation of the spine and a diagnosis of subluxation as demonstrated by x-ray. The Office requested that she submit the additional evidence within 30 days.

By decision dated July 8, 2002, the Office denied appellant's claim, finding that she failed to submit sufficient medical evidence in support of her claim.

By letter dated July 16, 2002, appellant's attorney requested an oral hearing, which was held on May 22, 2003.

Appellant submitted an August 28, 2002 report and impairment evaluation from Dr. John J. Vargo, an osteopath, who indicated that appellant had a 12 percent impairment of the whole person, causally related to "the industrial injury," although he noted that appellant sustained two other work injuries in addition to the December 18, 2001 incident. In addition, appellant submitted a June 11, 2002 medical clinic admission form, in which she related the history of a March 20, 2002 work accident and noted that she was being treated by Dr. Accordino; and an October 21, 2002 radiology report, which indicated that there was no evidence of fracture or dislocation or marked osseous abnormalities. The report concluded that the facet joints were mostly unremarkable with exception of some mild degenerative changes at the L5-S1 facets, that there were no abnormal spinal curvatures and that the pedicles and disc space heights were preserved.

By decision dated August 8, 2003, an Office hearing representative affirmed the July 8, 2002 Office decision.

The Board finds that appellant has failed to establish that she sustained a lower back injury in the performance of duty on December 18, 2001.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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 and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

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 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 causal relationship is usually rationalized medical 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

[1] 5 U.S.C. §§ 8101-8193.

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

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[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).

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, it is uncontested that appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established by medical evidence[7] and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on December 18, 2001 caused a personal injury and resultant disability.

Appellant has not submitted a rationalized, probative medical opinion sufficient to demonstrate that her December 18, 2001 employment incident caused a personal injury or resultant disability. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.[8] Neither the fact that the condition became apparent during a period of employment, nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.[9] Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case. She submitted the April 18, 2002 report from Dr. Accordino, a chiropractor. However, section 8101(2) of the Act provides that the term "physician' … includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist."[10] Since Dr. Accordino did not provide any indication that he diagnosed a subluxation as demonstrated by x-ray in his April 18, 2002 report, he cannot be considered a physician under the Act. Thus, his April 18, 2002 report did not constitute valid medical evidence under the Act.

The only medical documents appellant submitted were the August 28, 2002 report from Dr. Vargo and the October 21, 2002 radiology report. Dr. Vargo stated findings on examination, indicated that appellant had a 12 percent impairment of the whole person causally related to "the industrial injury," but did not provide a specific diagnosis or indicate which employment incident, among the three he discussed resulted in this impairment.[11] The weight of the medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided the care of analysis manifested and the medical rationale expressed in support of stated conclusions.[12] Although Dr. Vargo stated in his August 28, 2002 report, that appellant's current right lower back problem resulted from an industrial injury, this statement is not probative with

[6] *Id*.

[7] *See John J. Carlone*, 41 ECAB 353 (1989).

[8] *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

[9] *Id*.

[10] 5 U.S.C. § 8101(2); *see also Linda Holbrook*, 38 ECAB 229 (1986).

[11] In addition, Dr. Vargo attributed some of this impairment to a left knee condition.

[12] *See Anna C. Leanza*, 48 ECAB 115 (1996).

regard to causal relationship because it is vague and lacking rationale. He failed to provide a rationalized, probative medical opinion relating a diagnosed condition to the December 18, 2001 employment incident.

The Office advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. She, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which the December 18, 2001 work accident would have caused the claimed injury. Accordingly, as appellant has failed to submit any probative medical evidence establishing that she sustained a lower back injury in the performance of duty, the Office properly denied her claim for compensation.

The decision of the Office of Workers' Compensation Programs dated August 8, 2003 is hereby affirmed.

Dated, Washington, DC
December 3, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member