U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIFFANY J. WILLIAMS and DEPARTMENT OF AGRICULTURE, FOREST SERVICE, BLACK HILLS NATIONAL FOREST, Custer, SD

Docket No. 02-1065; Submitted on the Record;
Issued January 29, 2003

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury on March 19, 2001 causally related to factors of his employment.

On April 11, 2001 appellant, then a 37-year-old law enforcement officer, filed a traumatic injury claim alleging that on March 19, 2001 he became ill from something he ate at dinner at the mess hall while attending classes at the Federal Law Enforcement Training Academy in Glynco, Georgia.[1]

In a report dated March 20, 2001, Ruth Simmons, a physician's assistant, stated that appellant had been experiencing nausea, stomach cramps and diarrhea. She made an assessment of gastroenteritis.

In an emergency room report dated March 21, 2001, a physician with an illegible signature, indicated that appellant had been experiencing severe diarrhea since "Monday" (March 19, 2001) and he made a "diagnosis" of diarrhea. He did not indicate the cause of appellant's condition and recommended further evaluation.

By letter dated June 28, 2001, the Office of Workers' Compensation Programs advised appellant that he needed to submit rationalized medical evidence from a physician establishing that his condition on March 19, 2001 was causally related to his employment.

By decision dated August 3, 2001, the Office denied appellant's claim on the grounds that he had failed to submit medical evidence from a physician establishing that his injury on March 19, 2001 was causally related to factors of his employment.[2]

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[1] Appellant was scheduled to attend classes from February 27 to June 8, 2001.

[2] The record contains additional evidence that was not before the Office at the time it issued its August 3, 2001 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. *See* 20 C.F.R. §

The Board finds that appellant has failed to establish that he sustained an injury on March 19, 2001 causally related to factors of his employment.

Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition is causally related to factors of his employment. Where an employee is on a temporary-duty assignment away from his federal employment, he is covered by the Federal Employees' Compensation Act 24 hours a day with respect to any injury that results from activities essential or incidental to his temporary assignment.[3]

The Board has also previously recognized that Larson, in his treatise, *The Law of Workers' Compensation*, sets forth the general criteria for performance of duty as it relates to travel employees or employees on temporary-duty assignments as follows:

> "Employees whose work entails travel away from the employer's premises are held in the majority of jurisdictions to be within the course of their employment continuously during the trip, except when a distinct departure on a personal errand is shown. Thus, injuries arising out of the necessity of sleeping in hotels or eating in restaurants away from home are usually held compensable."[4]

However, the fact that an employee is on a special mission or in travel status during the time a disabling condition manifests itself does not raise an inference that the condition is causally related to the incidents of the employment.[5] The medical evidence must establish a causal relationship between the condition and factors of employment.[6]

Appellant submitted a report dated March 20, 2001 in which Ms. Simmons, a physician's assistant, stated that appellant had been experiencing nausea, stomach cramps and diarrhea. She made an assessment of gastroenteritis. However, a physician's assistant is not a "physician" as defined under the Act.[7] Lay individuals such as physician assistants, nurse practitioners and social workers are not competent to render a medical opinion.[8] Therefore, this evidence is not probative to establish that appellant sustained an injury on March 19, 2001 causally related to factors of his employment.

501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997).

[3] *See Cherie L. Hutchings*, 39 ECAB 639, 643 (1988).

[4] 1 A. Larson, *The Law of Workers' Compensation*, § 25.01 (2000); *see also Lawrence J. Kolodzi*, 44 ECAB 818, 822 (1993).

[5] *See William B. Merrill*, 24 ECAB 215, 219 (1973).

[6] *Id.*

[7] As defined by the Act in 5 U.S.C. § 8101(2), "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law.

[8] *See Arnold A. Alley*, 44 ECAB 912, 921 (1992); *Sheila Arbour*, 43 ECAB 779, 787 (1992).

In an emergency room report dated March 21, 2001, a physician indicated that appellant had been experiencing severe diarrhea since March 19, 2001 and he made a "diagnosis" of diarrhea. However, he did not indicate the cause of appellant's diarrhea. As the physician did not explain how appellant's condition was causally related to his employment, this evidence is insufficient to discharge appellant's burden of proof

The decision of the Office of Workers' Compensation Programs dated August 3, 2001 is affirmed.

Dated, Washington, DC
January 29, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member