U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA C. HOLMES and DEPARTMENT OF JUSTICE, BUREAU OF PRISONS, FCI Terminal Island, CA

Docket No. 01-1668; Submitted on the Record;
Issued March 14, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO, MICHAEL E. GROOM

The issue is whether appellant met her burden of proof in establishing that she sustained a right knee injury in the performance of duty on June 4, 2000.

On June 10, 2000 appellant, then a 30-year-old correctional officer, filed a claim for compensation alleging that she sustained a knee injury when she fell on stairs on June 4, 2000. Appellant stopped work on June 4, 2000.

In support of her claim, appellant submitted treatment notes from Dr. Edwin Ashley, a Board-certified orthopedic surgeon, dated April 3 to June 9, 2000. Dr. Ashley noted that appellant was treated for bilateral knee pain. He noted a date of injury of March 23, 2000. Dr. Ashley recommended a right knee support.

Subsequently, appellant submitted a report from Dr. Ashley dated June 12, 2000 and Dr. Barton Wachs, a specialist in urology, dated August 10, 2000. Dr. Ashley indicated that appellant continued to experience knee pain with activities at work. Upon physical examination he noted positive joint line pain in the right knee; positive crepitation; and mild swelling. Dr. Ashley diagnosed appellant with internal derangement of both knees, right greater than left. He recommended temporary total disability. Dr. Wachs noted that appellant was status post-arthroscopic surgery and presented with a urinary retention problem.

By letter dated September 6, 2000, the Office of Workers' Compensation Programs requested additional medical evidence from appellant stating that the initial information submitted was insufficient to establish fact of injury. The Office advised appellant of the type of medical evidence needed to establish her claim.

Appellant submitted an operative note dated August 9, 2000, indicating she underwent left knee arthroscopy and debridement.

In a decision dated October 23, 2000, the Office denied appellant's claim as the medical evidence did not sufficiently provide any history of the alleged June 4, 2000 work incident.[1]

In a letter date stamped January 11, 2001, appellant requested reconsideration and submitted additional medical evidence. Appellant submitted two disability slips from Dr. Ashley dated September 11 and October 2, 2000; and physical therapy notes dated September 19 to October 16, 2000. The September 11, 2000 disability slip recommended water aerobics for her left knee derangement. The October 16, 2000 therapy note noted that appellant was status post left knee scope and recommended physical therapy. The physical therapy notes indicate that appellant injured both knees on March 23, 2000 and had been undergoing physical therapy from September to October 2000. Appellant noted that she was initially injured on March 23, 2000.[2] She stated that on June 4, 2000 she sustained another injury when she fell on steps and bumped her right knee. Appellant indicated that she understood both claims would be handled under the March 23, 2000 claim and that she was not required to submit additional information.

In a decision dated February 7, 2001, the Office denied appellant's claim as the medical evidence was not sufficient to establish that she sustained an injury to her right knee as a result of the June 4, 2000 employment incident.

The Board finds that appellant has failed to establish that she sustained a right knee injury in the performance of duty on June 4, 2000, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of 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 filed within the applicable time limitation 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 is causally related to the employment injury."[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[4]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[5] In some traumatic injury cases, this

[1] 5 U.S.C. §§ 8101-8193

[2] The March 23, 2000 injury is Office claim No. 13-1214227.

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

[4] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[5] *Elaine Pendleton*, *supra* note 3.

component can be established by an employee's uncontroverted statement on the Form CA-1.[6] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.[7]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[8]

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 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. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

In this case, it is not disputed that appellant was walking down steps on June 4, 2000 when she fell. However, she has not submitted sufficient medical evidence to support that a right knee condition has been diagnosed in connection with the employment incident.

On September 6, 2000 the Office advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit any medical report from an attending physician addressing how the June 4, 2000 incident caused or aggravated her right knee condition. Appellant submitted several reports from Dr. Ashley noting appellant was treated for bilateral knee pain, with a date of injury of March 23, 2000. Dr. Ashley's report dated June 12, 2000, indicated that appellant continued to experience pain in her knee with activities at work. He diagnosed appellant with internal derangement of both knees. Dr. Ashley recommended temporary total disability at this time. Dr. Ashley's other notes recommended physical therapy for appellant. In none of Dr. Ashley's reports does he note a history of the injury or the employment factors believed to have caused or contributed to appellant's right knee condition, instead Dr. Ashley merely indicated that appellant sustained an onset of pain in the bilateral knees on March 23, 2000.[10] Additionally, Dr. Ashley's reports do not include a rationalized

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[8] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[9] *James Mack*, 43 ECAB 321 (1991).

[10] *See Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

opinion regarding the causal relationship between appellant's right knee condition and the factors of employment believed to have caused or contributed to such condition.[11] Therefore, these reports are insufficient to meet appellant's burden of proof.

The Board notes that appellant submitted several physical therapy notes in support of her claim. However, such reports are not considered medical evidence as a physical therapist is not considered a physician under the Act.[12]

The remainder of the medical evidence, failed to note appellant's history of injury or to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship.[13] Causal relationships must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence and the Office, therefore, properly denied appellant's claim for compensation.

The February 7, 2001 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 14, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

[11] *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

[12] *See* 5 U.S.C. § 8101(2) (which defines a ''physician'' as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; *see also Thomas R. Horsfall*, 48 ECAB 180 (1996).

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