U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARYJO BURKGREN and U.S. POSTAL SERVICE,
POST OFFICE, Des Moines, IA

Docket No. 01-851; Submitted on the Record;
Issued March 12, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained an injury on March 24, 2000 in the performance of duty, causally related to factors of her federal employment.

On March 24, 2000 appellant, then a 42-year-old letter carrier, filed a claim alleging that on that date she sustained neck pain when a staircase collapsed while she was delivering mail. Appellant had previously undergone a C6-7 anterior fusion. She did not stop work.

Appellant submitted a March 25, 2000 prescription from Dr. "T. Conway," a physician, who stated: "Light duty at work until rechecked by Dr. Beck." A March 25, 2000 emergency room report from Dr. Conway also submitted which noted that appellant had a history of two previous neck surgeries. He opined that appellant sustained a compression-type injury, stated that she began to experience some discomfort in the neck with radiation into the left shoulder and some weakness and vague paresthesias in the left arm. He noted a diagnosis of "[l]eft shoulder pain with some weakness and paresthesias I believe most consistent with cervical radiculopathy."

By report dated April 3, 2000, Dr. David W. Beck, a Board-certified neurosurgeon, noted that appellant was seen that date complaining of severe neck pain and left arm weakness. She previously had a C6-7 anterior fusion and, after the March 24, 2000 incident in which the steps collapsed, developed severe pain in her upper back and neck and claimed that her left arm did not work. Dr. Beck noted, upon examination, that appellant complained of pain and tenderness to palpation of her neck, she had a full range of motion, she demonstrated left arm weakness which he thought might be some breakaway weakness in the triceps and biceps and her reflexes were preserved. He recommended radiographic evaluation. No diagnosis was offered.

By report dated April 5, 2000, Dr. Beck stated that, "[appellant] returned for follow-up of her left arm weakness and neck pain. Magnetic resonance imaging (MRI) is completely normal of her neck and thoracic spine." Dr. Beck recommended continued light duty. The cervical spine MRI demonstrated "mild to moderate bulging of the C5-6 disc centered to the left of

midline, which [was] roughly the same as it was back in November 1996." It further noted a healed anterior fusion at C6-7. Mild to moderate bulges were also noted at T6-7 and T7-8.

Radiologic examination of the lateral thoracic spine was reported as demonstrating no evidence for compression fracture and only very minimal osteophytic lipping without sclerotic lesions.

By report dated May 8, 2000, Dr. Beck noted that appellant still had weakness in her left hand, which was described as bizarre. On examination, her reflexes were intact, she had no pain and the physician was not sure whether this was functional or real weakness." He referred her to Dr. Sant M. Hayreh a Board-certified neurosurgeon.

By report dated May 10, 2000, Dr. Hayreh reviewed appellant's history and complaints, performed a neurological examination and noted that appellant appeared to be flopping her left arm around, which appeared to be somewhat functional in nature. He diagnosed status post cervical laminectomy with fusion; history of depression with ongoing problems; and neck pain with weakness in the left upper extremity. Dr. Hayreh stated this was functional in nature, the less likely possibility was that of organic pathology.

By letter dated May 31, 2001, the Office of Workers' Compensation Programs requested further information including a physician's opinion on causal relation.

A May 18, 2000 follow-up report from Dr. Hayreh noted that further testing revealed "evidence of major depression which appeared to be recurrent and severe with psychotic features."

By report dated June 9, 2000, Dr. Beck diagnosed left-hand weakness that occurred when the stairs collapsed as she was delivering mail. Subsequently appellant had pain and left arm weakness and at the present time she had lost the ability of fine movement of her left arm. He stated that her disability started at the time of her injury. Dr. Beck recommended limiting left arm usage for fine motor control.

By report dated June 28, 2000, Dr. Beck noted that appellant returned complaining of left upper extremity dysfunction and that "[s]he still has a rather bizarre examination with shaking of the left arm uncontrolled."

By report dated June 29, 2000, Dr. Beck recommended that appellant seek another opinion regarding her left upper extremity dysfunction. He noted that appellant "presents with a neurologic picture that I cannot explain and I recommend another opinion on this."

An electromyogram (EMG), terminal latencies and nerve conduction velocity studies on the left side performed on July 7, 2000 were reported as normal without any evidence of obvious denervation. Tinel's sign was negative on the left median nerve of the wrist and the left ulnar nerve at the elbow and there was no obvious sensory deficit to light touch and pinprick, but there was diffuse giveaway-type weakness in all muscle groups. Dr. Hayreh diagnosed "rule out carpal tunnel syndrome."

By decision dated August 11, 2000, the Office rejected appellant's claim finding that she had failed to establish fact of injury. The Office found that the incident occurred as alleged but that appellant had failed to submit rationalized medical evidence establishing that a specific medical condition resulted. The Office noted that appellant had claimed that she sustained a neck condition, but that the evidence of record showed that she had previously had a cervical laminectomy, fusion and that no neck condition had been diagnosed as being related to the incident of March 24, 2000.

On August 28, 2000 the Office received a request from appellant for reconsideration of her claim. She claimed that her bulging thoracic discs, which abutted the ventral aspect of her spinal cord, could cause problems and that although her symptoms were bizarre, they were real. Appellant previously submitted evidence including a picture of the broken stair case, a copy of the March emergency room report and the April 2000 MRI and a March 25, 2000 radiology report,[1] an emergency room nursing report and an illegible emergency room report which noted a diagnosis of cervical radiculopathy. Her counsel solicited a further report from Dr. Beck, who provided a July 10, 2000 report that stated: "I do think the fall on March 24, 2000 contributed significantly to [appellant's] weakness, pain and left arm dysfunction and I say that within a reasonable degree of medical certainty." He also stated, "I am still not certain what the etiology is, that is the exact nature of her injury."

By decision dated October 10, 2000, the Office denied modification of the August 11, 2000 decision. The Office noted that without a diagnosis supported by objective findings it was not established that appellant sustained an injury.

On October 23, 2000 the Office received a request for reconsideration from appellant, who submitted an October 16, 2000 report from Dr. Beck which stated: "[Appellant] ha[d] a well-defined workers' compensation injury in March 2000 causing left arm pain and weakness. Her diagnosis is cervical radiculopathy."

By decision dated November 7, 2000, the Office denied modification of the October 10, 2000 decision. The Office found that Dr. Beck's most recent report was unrationalized, as well as inconsistent with his earlier reports in which he noted that appellant's symptoms were bizarre, that the etiology was unknown and that he could not explain appellant's neurologic picture. The Office also noted that no objective testing confirmed any cervical radiculopathy with the neurologic testing performed in July 2000 reported as being normal.

The Board finds that this case is not in posture for decision.

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

[1] Neural foramina were found to be unremarkable, soft tissues did not appear to be significantly swollen, the remainder of the soft tissues and bones visualized were grossly unremarkable.

experienced the employment incident at the time, place and in the manner alleged.[2] 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.[3]

In this case, the Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, the medical evidence appellant has submitted is in conflict creates a conflict in opinion regarding the nature of injury appellant sustained from the accepted incident.

As part of appellant's burden of proof, she must present rationalized medical opinion evidence, based upon a complete factual and medical background, demonstrating causal relationship with the implicated employment incident or factors.[4] Rationalized medical opinion evidence is medical evidence that 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. Such an 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 appellant.[5] The medical evidence should identify and support a causal relation on the basis of its pathophysiology, explained such that a nonmedical person can visualize and understand its connectedness.[6]

Appellant submitted emergency room treatment records on which she was diagnosed as having left shoulder pain with some weakness and paresthesia most consistent with cervical radiculopathy. It was noted that appellant required medication for her presenting symptomatology. These contemporaneous records are of significant probative value and support that the accepted incident caused some sort of injury.

Thereafter, appellant was seen by her treating physician, Dr. Beck, a neurosurgeon, who felt that appellant should be on light duty and needed some therapy, despite a normal radiodiagnostic scanning results and that he was unsure whether appellant's left hand weakness was functional or real. Dr. Beck later opined that appellant's symptomatology was "probably real" and he diagnosed it as left shoulder pain with some weakness and paresthesias, which he

[2] *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

[3] *Id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[4] *Corlisia L. Sims (Smith)*, 46 ECAB 172 (1994).

[5] *See Donna Faye Cardwell*, 41 ECAB 730 (1990); *Lillian Cutler* 28 ECAB 125 (1976).

[6] *See generally John H. Smith*, 41 ECAB 444 (1990); *Gary L. Loser*, 38 ECAB 673 (1987); *Alvin C. Lewis*, 36 ECAB 595 (1985).

felt was consistent with cervical radioculopathy. This response, although couched in speculative terms, does support that some injury was sustained as a result of the March 24, 2000 incident.

Dr. Conway reiterated, after examining appellant, that she had sustained a "compression-type injury" consistent with cervical radiculopathy.

Following Dr. Beck's treatment, he diagnosed "left hand weakness" but he did not opinion as to the exact etiology of appellant's condition or the exact nature of her injury. He thereafter, diagnosed cervical radiculopathy but was not able to correlate it with electrodiagnostic testing results. In a July 10, 2000 report, Dr. Beck opined that the fall on March 24, 2000 contributed significantly to appellant's pain, weakness and left arm dysfunction.

Proceedings under the Federal Employees' Compensation Act are not adversary in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.[7] In the instant case, although none of appellant's treating physicians' reports contain rationale sufficient to completely discharge her burden of proving by the weight of reliable, substantial and probative evidence that she sustained an injury, causally related to her March 24, 2000 work incident, they constitute substantial evidence in support of appellant's claim and raised an uncontroverted inference of causal relationship between her treated condition and the March 24, 2000 incident that is sufficient to require further development of the case record by the Office.[8]

[7] *William J. Cantrell*, 34 ECAB 1223 (1983).

[8] *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978); *see also Cheryl A. Monnell*, 40 ECAB 545 (1989); *Bobby W. Hornbuckle*, 38 ECAB 626 (1987) (if medical evidence establishes that residuals of an employment-related impairment are such that they prevent an employee from continuing in the employment, he is entitled to compensation for any loss of wage-earning capacity resulting from such incapacity).

Consequently, the decisions of the Office of Workers' Compensation Programs dated November 7, October 10 and August 11, 2000 are hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, DC
March 12, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom, Alternate Member, dissenting:

The issue in this case is whether appellant has submitted efficient medical evidence to establish that she sustained an injury on March 24, 2000, following the collapse of a stairway on which she was standing. I find the medical evidence submitted by appellant to be vague as to the nature of any lest upper extremity or cervical condition sustained and speculative on the issue of causal relationship. I do not find that the medical evidence submitted creates a conflict of medical opinion or warrants further development. I would affirm the decision of the Office of Workers' Compensation Programs.

Michael E. Groom
Alternate Member