U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY T. PLEASANT and DEPARTMENT OF HOUSING & URBAN DEVELOPMENT, NEW ORLEANS OFFICE, New Orleans, La.

Docket No. 98-682; Submitted on the Record;
Issued June 17, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained a injury in the performance of duty on March 6, 1995.

On March 6, 1995 appellant, then a 55-year-old housing managing specialist, filed a claim for a traumatic injury alleging that she injured her back, buttocks, legs, shoulders, and arms while packing boxes on that date. Appellant did not stop working.

On January 19, 1995 Dr. James Tebbe, a Board-certified family practitioner, indicated that he treated appellant for a ruptured disc, L4-5, left.

On January 20, 1995 Dr. Richard L. Corales, a Board-certified neurological surgeon, diagnosed a recurrent left L4-5 herniated disc with resultant L5 radiculopathy. He performed a left laminotomy, foraminotomy and discectomy at L4-5 interspace on January 23, 1995. On February 21, 1995, Dr. Corales prescribed exercises for a laminectomy/discectomy.

On March 9, 1995 a family practitioner, who signed his name illegibly, indicated that he provided pre and post-operative care for a lumbar discectomy performed on January 23, 1995. He checked "yes" to indicated the injury was caused or aggravated by the employment activity described and noted as a history that appellant fell on her tailbone in January 1994.

On April 7, 1995 Dr. Joseph P. Braud, a general practitioner, diagnosed low back syndrome, post-surgical laminectomy, and aggravation of lower back disease. He recorded appellant's statement that she injured her back packing boxes and checked "yes" to indicate that he believed the condition found was caused or aggravated by the employment activity described.

On May 2, 1995 Dr. Braud diagnosed lower back disease. He checked "yes" to indicate that the condition found was caused of aggravated by the employment activity described and noted that appellant said she was packing boxes when the injury occurred. Dr. Braud recorded a

history of multiple back injuries and surgeries dating back to 1987. He also noted that appellant fell in 1994.

On June 1, 1995 Dr. Braud diagnosed low back syndrome, post-surgical laminectomy, and aggravation of lower back disease. He recorded appellant's statement that she injured her back packing boxes and checked "yes" to indicated that he believed the condition found was caused or aggravated by the employment activity described.

On June 12, 1995 Dr. Braud found that appellant was disabled due her lower back injuries.

On August 4, 1995 the Office requested additional evidence including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

On August 25, 1995 Dr. Braud indicated that he initially saw appellant on March 31, 1995 for complaints of pain in her lower back and legs. Dr. Braud indicated that appellant stated that she aggravated her January 23, 1995 surgery while lifting, twisting, bending and moving boxes on March 6, 1995. He recorded that appellant stated that she developed pain in her lower back, buttocks, arms and shoulders. Dr. Braud stated that her condition started in 1987 due to a job related injury and progressed until 1991 resulting in surgery in February 1991 and April 1991. Dr. Braud stated that appellant re-injured her back in January 1994 when she fell and in September 1994 when she picked up a box of files. He indicated that severe pain on January 13, 1995 in appellant's back and left leg resulted in a January 23, 1995 surgery. Dr. Braud diagnosed post-surgical laminectomies, low back syndrome, left sciatica, and aggravation of lower back disease.

In a decision dated September 14, 1995, the Office rejected appellant's claim for the reason that the fact of injury was not established. In an accompanying memorandum, the Office accepted that the March 6, 1995 work incident occurred as alleged, but found that there was no medical evidence supporting that appellant sustained an injury on March 6, 1995.

The Board finds that appellant failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on March 6, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim[2] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition

[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. 10.110.

[3] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

for which compensation is claimed are causally related to the employment injury.[5] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether an 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.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[9]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[10] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[11]

In this case, there is no dispute that appellant was an "employee" within the meaning of the Act, nor that appellant timely filed her claim for compensation. Moreover, the Office accepted that the March 6, 1995 work incident occurred as alleged. Appellant, however, has not submitted medical evidence to establish that she incurred an employment-related injury. Dr. Braud supplied the only medical reports addressing whether appellant's back problems were related to the March 6, 1995 work incident. None of these reports, however, explained how and why the employment incident caused or aggravated appellant's back condition.[12] Consequently, she has not submitted rationalized medical evidence, based on a complete history, explaining how and why her back condition is employment related. As noted above, the question of whether an employment incident caused a personal injury generally can only be established by

[5] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[6] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

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

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[10] *See Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *See Carlone*, *supra* note 8.

[12] *Id.*

medical evidence. Such evidence was requested by the Office but was not submitted by appellant.

The decision of the Office of Workers' Compensation Programs dated September 14, 1995 is affirmed.

Dated, Washington, D.C.
June 17, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member