

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAVERNE SANTOR and U.S. POSTAL SERVICE,
POST OFFICE, East Hartford, CT

*Docket No. 98-84; Submitted on the Record;
Issued August 19, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty.

Appellant filed a claim on October 20, 1995 alleging that she experienced pain in the right side of her pelvis on May 16, 1995 while bending in the performance of duty. The Office denied appellant's claim by decision dated December 19, 1995, finding that she failed to submit sufficient medical evidence to establish a causal relationship between her condition and her employment incident. Appellant requested an oral hearing on January 22, 1996. The Branch of Hearings and Review denied this request as untimely on February 15, 1996. Appellant requested reconsideration on April 25, 1996. The Office denied modification of its December 19, 1995 decision on June 25, 1996. Appellant requested reconsideration on October 7, 1996 and the Office again denied modification of its December 19, 1995 decision on January 22, 1997. Appellant requested reconsideration on March 3, 1997 and the Office denied this request finding that the evidence submitted was not relevant.

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.¹ The second component is whether the employment incident caused a personal injury and generally can be

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

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.² 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.³

In this case, the Office accepted that the May 16, 1995 bending incident occurred as alleged. However, the Office found that appellant had not submitted sufficient medical evidence to establish a causal relationship between her accepted employment injury and a diagnosed condition.

In support of her claim, appellant submitted several reports from Dr. Mary Barry, a Board-certified internist. On November 1, 1995 Dr. Barry diagnosed right hip and leg pain. On November 6, 1995 Dr. Barry diagnosed a musculoskeletal problem. In December 1995 Dr. Barry noted appellant's date of injury as May 16, 1995 and diagnosed musculoskeletal or mechanical pelvic and back pain. On February 12, 1996 Dr. Barry diagnosed pain in the groin and right hip and leg. In a report dated August 19, 1996, Dr. Barry stated appellant had musculoskeletal back pain by history sustained at work. These reports are not sufficient to meet appellant's burden of proof as Dr. Barry did not provide a clear diagnosis of appellant's condition and did not provide any reasoning in support of her opinion that appellant's condition was due to her accepted employment incident.

Appellant also submitted reports from Dr. Philip H. Lahrman, a Board-certified gynecologist, who noted that appellant underwent surgery for mild endometriosis and pelvic adhesions on June 15, 1995. In a report dated April 15, 1996, Dr. Lahrman stated that he did not believe that appellant's continuing pain was due to her endometriosis or adhesions. These reports are not sufficient to establish that appellant developed a physical condition due to her accepted employment incident. Dr. Lahrman did not provide an opinion based on his medical examination that appellant's current condition was due to her employment injury. He merely stated that if appellant's other physician's consider that to be true he would agree.

In a report dated March 22, 1996, Dr. David A. Kvam, a Board-certified neurosurgeon, noted appellant's history of bending on May 16, 1995 and diagnosed low back and right leg pain. Dr. Kvam did not offer an opinion on the causal relationship between appellant's condition and her employment injury and his report is insufficient to meet appellant's burden of proof.

² See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

³ *James Mack*, 43 ECAB 321 (1991).

Dr. E.J. Collins, a Board-certified orthopedic surgeon, submitted several reports in support of appellant's claim. In notes dated February 26 and March 20, 1996, Dr. Collins noted appellant's history as bending and twisting "several months ago" diagnosed right sciatica and stated that appellant's condition was clearly work related. In a report dated April 3, 1996, he diagnosed muscular ligamentous strain syndrome related to work activity. On August 22, 1996 Dr. Collins stated that appellant's back condition was directly related to her May 16, 1995 employment injury.

Although Dr. Collins noted appellant's history of injury, diagnosed muscular ligamentous strain syndrome and opined that this condition was causally related to appellant's employment injury, his reports are not sufficient to meet appellant's burden of proof. Dr. Collins did not provide any medical rationale explaining how and why appellant's employment incident in May 1995 would result in her diagnosed back condition over nine months later.

As appellant has failed to submit the necessary rationalized medical opinion evidence to establish that her musculoligamentous strain syndrome was caused by her accepted employment incident on May 16, 1995 she has failed to meet her burden of proof.

The Board further finds that the Office did not abuse its discretion by refusing to reopen appellant's claim for consideration of the merits on May 29, 1997.

Appellant requested reconsideration of the Office's January 22, 1997 merit decision on March 3, 1997. In support of her request for reconsideration, appellant submitted an affidavit describing her May 16, 1995 employment incident and medical treatment. Appellant also submitted an affidavit from a coworker indicating that appellant had groaned on May 16, 1995.

Section 10.138(b)(1) of the Code of Federal Regulations provides that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law; or (2) advancing a point of law or a fact not previously considered by the Office; or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without review the merits of the claim.⁵

In this case, the evidence that appellant submitted was not relevant to the issue for which the Office denied her claim, whether her accepted employment injury resulted in the diagnosed condition. As the Office had already accepted that the employment incident occurred as alleged and as appellant's factual assertions regarding her claim cannot provide the necessary medical evidence to establish her claim, the Office properly refused to reopen appellant's claim for consideration of the merits.

The decisions of the Office of Workers' Compensation Programs dated May 29 and January 22, 1997 are hereby affirmed.

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ 20 C.F.R. § 10.138(b)(2).

Dated, Washington, D.C.
August 19, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member