

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CELIA F. BROWN and U.S. POSTAL SERVICE,  
POST OFFICE, Westbury, N.Y.

*Docket No. 97-971; Submitted on the Record;  
Issued December 2, 1998*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on September 4, 1996 or on September 5, 1996.

On September 5, 1996 appellant, then a 37-year-old clerk, filed a notice of traumatic injury alleging that she felt discomfort in her right hip after completing work on September 4, 1996 and that when she lifted a tub of mail on September 5, 1996 the pain returned.

On September 4, 1996 a family practitioner, signing his or her name illegibly, advised that appellant go on light duty and that she visit a surgeon for a possible hernia. The same doctor indicated on September 5, 1996 that he treated appellant for groin pain.

On September 5, 1996 appellant indicated that she believed she had a hernia or pulled a muscle. Appellant stated that she thought she pulled a muscle on September 4, 1996 and that on September 5, 1996 she lifted a tub of flats and felt the pain again.

On September 6, 1996 an employing establishment supervisor indicated that appellant reported an ailing hip on September 4, 1996 and that he was reasonably sure appellant told him it was due to her working out outside of work. The supervisor further stated that on September 5, 1996 appellant reported a hip injury lifting two tubs of mail and that she stated that she might have a hernia.

On September 6, 1996 a coworker noted that appellant was complaining of hip pain and hobbling around.

On September 12, 1996 Dr. Michael Sommer, a physician, Board-certified in internal medicine, stated that he examined appellant and that she was much improved from a groin injury.

On September 27, 1996 the Office requested additional information from appellant. Specifically, the Office requested a comprehensive medical report describing appellant's symptoms, results of examinations and tests, diagnosis, the treatment provided, the effect of treatment and the doctor's opinion, with medical reasons, on the cause of the condition. Appellant was given approximately 30 days to respond.

By decision dated December 4, 1996, the Office rejected appellant's claim because fact of injury was not established. In an accompanying memorandum, the Office noted that the evidence of file failed to support the fact of an injury and a medical condition resulting from the alleged work incidents or exposures.

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 September 4, 1996 or on September 5, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim<sup>2</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>4</sup> 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 are causally related to the employment injury.<sup>5</sup> These are the essential element of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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 evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>7</sup> 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.<sup>8</sup>

In the instant case, there is no dispute that appellant was an "employee" within the meaning of the Act, nor that appellant timely filed his claim for compensation. Nevertheless, a person who claims benefits for a work-related condition has the burden of establishing by the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

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

<sup>4</sup> 5 U.S.C. § 8122.

<sup>5</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>6</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.*

weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.<sup>9</sup> In this case, appellant failed to submit any medical evidence providing a firm diagnosis of an injury or addressing whether her injury was related to a September 4, 1996 or a September 5, 1996 work incident. Dr. Sommers, a physician Board-certified in internal medicine, only stated that he examined appellant for a possible hernia and that she was much improved from a groin injury. Moreover, the family practitioner treating appellant only stated that he treated appellant for a possible hernia and for groin pain. The Office advised appellant of the deficiency in the medical evidence, but appellant failed to submit rationalized medical opinion evidence addressing the relevant issues. Appellant, therefore, failed to meet her burden of proof.

The decision of the Office of Workers' Compensation Programs dated December 4, 1996 is affirmed.

Dated, Washington, D.C.  
December 2, 1998

Michael J. Walsh  
Chairman

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

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<sup>9</sup> *Patricia Bolleter*, 40 ECAB 373 (1988).