

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY G. ULRICH and U.S. POSTAL SERVICE,
POST OFFICE, Pass Christian, Miss.

*Docket No. 96-2314; Submitted on the Record;
Issued July 17, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained osteoarthritis, costochondritis, floating rib syndrome or rib impingement syndrome beginning September 12, 1995 causally related to factors of her federal employment.

On December 18, 1995 appellant, then a former part-time flexible distribution clerk, filed an occupational disease claim, alleging that she sustained osteoarthritis, plantar fasciitis, costochondritis, floating ribs syndrome, rib impingement syndrome, shoulder arthritis and second degree cystocele and that these conditions were related to her performance of duties as a part-time flexible distribution clerk. Appellant indicated that she first became aware of these conditions in November 1994 and became aware they were work related on January 11, 1995. Appellant was terminated from her position effective September 22, 1995. On February 5, 1996 the employing establishment controverted appellant's claim, asserting that she had failed to demonstrate a causal relationship between the claimed conditions and factors of her federal employment. In a decision dated June 18, 1996, the Office of Workers' Compensation Programs accepted appellant's claim for temporary aggravation of bilateral plantar fasciitis and temporary aggravation of shoulder arthritis only. In a decision dated June 19, 1996, the Office reiterated the accepted conditions and found that appellant had not established that the claimed conditions of osteoarthritis in the legs, arms, wrists and hips, costochondritis, floating rib syndrome or rib impingement syndrome were related to or aggravated by her federal employment.

The Board has carefully reviewed the entire case record on appeal and finds that this case is not in posture for review.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim, including that she sustained an injury

¹ 5 U.S.C. §§ 8101-8193.

while in the performance of duty and that she had disability as a result.² In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether “fact of injury” has been established. Generally, “fact of injury” consists of two components, which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.³ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁵ The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁶

In the present case, appellant indicated that the heavy lifting, pushing and pulling of general purpose mail containers and large hampers of mail aggravated conditions she had at the time she underwent a total hysterectomy causing a second degree cystocele, that pivoting on her feet while trying to push the hampers caused pain in her feet, that reaching into the bottom of the hamper to distribute mail caused her ribs to rub against the metal sidebar of the container and caused pain in this area and that lifting and lowering the hydraulic lift caused pain in her fingers, lower abdomen, lower back and pelvis.

Appellant was examined by Dr. Richard Peden, an osteopath with Board certification in occupational medicine, who performed a fitness-for-duty examination of appellant on March 22, 1995. He found multiple joint deformities of the distal and proximal interphalangeal joints of both hands with normal grip and range of motion and minimal tenderness of the costochondral area on the right which was not aggravated by sternal compression. He diagnosed osteoarthritis involving the fingers of both hands and costochondritis, resolved. Dr. Peden indicated that appellant could return to her normal duties as of March 22, 1995.

Appellant submitted several reports by Dr. Thomas H. Hall, a Board-certified internist and her treating physician. In a report dated April 25, 1995, Dr. Hall diagnosed severe osteoarthritis, plantar fasciitis and costochondritis. He indicated that appellant should avoid heavy lifting and placed total restriction on appellant from climbing, kneeling, bending and stooping, and reaching above the shoulder. In a report dated October 19, 1995, Dr. Hall noted

² *Daniel R. Hickman*, 34 ECAB 1220 (1983); see 20 C.F.R. § 10.110(a).

³ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 3.803.2a (September 1980).

⁴ *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) (“traumatic injury” and “occupational disease” defined).

⁵ *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

⁶ *Manuel Garcia*, 37 ECAB 767 (1986).

that he first saw appellant for pain in her upper right quadrant on December 12, 1994, which was initially mild but had worsened over the eight months preceding his examination. He found a bony enlargement along the dorsal thoracic spine, which had been present for at least 25 years and was not enlarging and that the space between the right lower edge of the rib cage and the pelvis on the right side was extremely narrow, measuring one and a half centimeters at best. He reported that in a follow up examination in January 1995, the pain in this area had improved since appellant was taken off job duties that were obviously aggravating her conditions and diagnosed osteoarthritis and costochondritis, which were exacerbated by her specific job duties. Dr. Hall noted that he continued to see appellant for treatment and that in August 1995, her physical findings were unchanged. Dr. Hall indicated that appellant had sustained osteoarthritis, chronic neck and shoulder pain arthritic pain, recurrent floating rib syndrome/costochondritis and plantar fasciitis that were all aggravated by job requirements of her occupation and that she was advised to avoid heavy lifting, bending and stooping. He concluded that appellant was permanently partially disabled as a result of the aforementioned conditions and rib impingement syndrome. In response to a request for additional information from the Office dated March 13, 1996, Dr. Hall submitted a letter dated March 22, 1996, in which he indicated that appellant had been complaining of right upper quadrant -- right anterolateral lower chest wall soreness that had been ongoing since approximately December 1993 and was exacerbated by lifting and bending over her mail gurneys. Dr. Hall noted that this pain had improved since appellant was terminated from her position and was now essentially gone. He also reported that appellant's other conditions were related to arthritic deformities and that appellant's heavy manual labor caused a worsening of stiffness and pain, but that she had significantly improved since she left work.

Appellant also submitted a report dated November 17, 1995 by Dr. James D. Sewell, a Board-certified gynecologist, who reported that he had performed a hysterectomy, "bilateral salpingo-oophorectomy" and anterior "urethropexy" in March 1993. Dr. Sewell indicated that appellant achieved a good result from the surgery, which was due to urinary stress incontinence secondary to pelvic relaxation. He noted that at the time of her November 1994 examination, appellant inquired whether heavy lifting would cause a breakdown of her bladder repair. Dr. Sewell noted that appellant had excellent "urethro vesical" angle and again had a first or early second degree cystocele. On November 13, 1995 appellant was seen for "urge incontinence and stress incontinence with a second degree urethro cystocele."

While the reports by Dr. Hall are not sufficient to establish that appellant's osteoarthritis, costochondritis, floating rib syndrome and rib impingement syndrome are causally related to factors of her federal employment, the Board finds that these reports, given the absence of evidence to the contrary, are sufficient to require further development of the evidence. In addition, the report by Dr. Sewell is also sufficient to support an inference that appellant's claimed condition of second degree cystocele, which was not addressed by the Office, is causally related to her former position with the employing establishment. The Board notes that when an employee initially submits supportive factual and/or medical evidence, which is not sufficient to carry the burden of proof, the Office must inform the claimant of the defects in proof and grant at least 30-calendar days for the claimant to submit the evidence required to meet the burden of proof. The Office may undertake to develop either factual or medical evidence for determination

of the claim.⁷ It is well established that proceedings under the Act are not adversarial in nature,⁸ and while the claimant has the burden to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.⁹ The Office has the obligation to see that justice is done.¹⁰

In the present case, as there was an uncontroverted inference of causal relationship, the Office was obligated to request further information from appellant's treating physicians, Drs. Hall and Sewell. On remand, the Office should further develop the evidence by providing Drs. Hall and Sewell with statements of accepted facts and requesting that they submit a rationalized medical opinion on whether appellant's osteoarthritis, costochondritis, floating rib syndrome, rib impingement syndrome and second degree cystocele were causally related to factors of her federal employment. After such development as the Office deems necessary, a *de novo* decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated June 19, 1996 is set aside and the case is remanded for further proceedings consistent with this decision.

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

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁷ 20 C.F. R. § 10.11(b); *see also John J. Carlone, supra* note 4.

⁸ *See, e.g., Walter A. Fundinger, Jr.* 37 ECAB 200 (1985); *Michael Gallo*, 29 ECAB 159 (1978).

⁹ *Dorothy L. Sidwell*, 36 ECAB 699 (1985).

¹⁰ *William J. Cantrell*, 34 ECAB 1233 (1983).