

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELIZABETH COHEN and U.S. POSTAL SERVICE,
SOUTH FLORIDA DISTRICT, Miami, Fla.

*Docket No. 96-2432; Submitted on the Record;
Issued April 9, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on March 22, 1996.

On March 22, 1996 appellant, a 38-year-old clerk, reported feeling pain in the left side of her neck, left shoulder and left arm, and in her fingers while performing her duties at the employing establishment. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on April 22, 1996.

Appellant subsequently submitted a March 26, 1996 South Broward Hospital discharge instructions, an April 20, 1996 work status form from Dr. John J. Francavilla, a chiropractor, who placed appellant off work until April 29, 1996 and a Form CA-17 signed by Dr. Francavilla on April 30, 1996. The hospital instructions revealed appellant was prescribed Percocet and referred to an orthopedist. Appellant did not submit the actual hospital report. In the Form CA-17, Dr. Francavilla noted appellant's history that she had reported sharp pains in her neck, shoulder and fingers at work on March 22, 1996, and placed appellant off work until May 6, 1996.

By letter dated May 3, 1996, the employing establishment controverted the claim based on a lack of factual and medical evidence.

By letter dated May 14, 1996, the Office requested that appellant submit additional information in support of her claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office further requested that appellant submit a detailed description of how her employment injury occurred, and state why she did not report the injury within 30 days of the date it allegedly occurred. The Office stated that appellant had 30 days in which to submit the requested information. Appellant did not respond to this request within 30 days.

In a decision dated June 14, 1996, the Office rejected appellant's claim for compensation, finding that appellant failed to submit sufficient evidence to establish that she sustained an injury in the performance of duty on March 22, 1996.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty on March 22, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 experienced the employment incident at the time, place and in the manner alleged.⁴ 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.⁵ The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.⁶

In the present case, it is uncontested that appellant experienced an employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,⁷ and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on March 22, 1996 caused a personal injury and resultant disability.

¹ 5 U.S.C. §§ 8101-8193.

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁶ *Id.*

⁷ See *John J. Carlone*, *supra* note 4.

In the present case, the only medical evidence appellant submitted consists of the discharge instructions of the March 26, 1996 hospital report, Dr. Francavilla's April 20, 1996 work status form and the April 30, 1996 Form CA-17 signed by Dr. Francavilla, appellant's treating chiropractor. The March 26, 1996 hospital discharge instructions without the original hospital report containing the history, diagnosis and treatment rendered is of limited probative value. Dr. Francavilla's reports do not contain a diagnosis of subluxation as demonstrated by x-ray, and therefore, do not constitute an opinion of a physician pursuant to section 8101(2).⁸ Thus, appellant has failed to submit rationalized, probative medical evidence to establish that the employment incident on March 22, 1996 caused a personal injury and resultant disability.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant has therefore failed to establish that she sustained an injury on March 22, 1996 as alleged.

The decision of the Office of Workers' Compensation Programs dated June 14, 1996 is hereby affirmed.

Dated, Washington, D.C.
April 9, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁸ 5 U.S.C. § 8101(2).