

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONDRA D. DeVANCE and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

*Docket No. 97-1523; Submitted on the Record;
Issued April 19, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained multiple medical conditions or disabilities causally related to factors of her federal employment.

On June 12, 1996 appellant, then a 34-year-old mail processor, filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on May 28, 1996, she sustained multiple employment-related injuries which were diagnosed as acute gastroenteritis of the digestive system secondary to food poisoning, thrombophlebitis secondary to an IV site in the right antecubital fossa and laceration of the throat which caused bleeding. Appellant states that she ate some food items (namely, a chicken taco and spanish rice) which caused uncontrollable vomiting and diarrhea. She also states that, during the course of her treatment, she received extreme phlebitis of the right arm. The record shows that appellant stopped work due to this alleged incident on May 28, 1996 and returned to work on June 12, 1996. On the reverse side of this form, the employing establishment indicated that its knowledge of the alleged incident was in agreement with the statements made by appellant. However, in a letter dated June 17, 1996, the cafeteria's servicing corporation, controverted appellant's claim arguing that approximately 60 people ate the same meal eaten by appellant on May 28, 1996 and no one else reported being ill. In a decision dated July 30, 1996, the Office of Workers' Compensation Programs denied appellant's claim for compensation benefits on the grounds that the evidence of record failed to establish a causal relationship between appellant's diagnosed conditions and the foods she ate in the cafeteria. The Office, found that, while the claimed event, incident or exposure occurred at the time, place and in the manner alleged, a medical condition or disability resulting from the accepted incident was not supported by the evidence of file. By letter dated November 19, 1996, appellant responded to the Office's July 30, 1996 decision by submitting additional medical evidence, which the Office considered a timely request for reconsideration of its July 30, 1996 decision. In a January 13, 1997 merit decision on reconsideration, the Office denied appellant's application for modification of its July 30, 1996 decision on the grounds that the factual and medical evidence submitted in support

of appellant's request for reconsideration did not establish a medical connection between appellant's medical condition or disability and her federal employment or that her diagnosed conditions were the results from the lunch she ate at her federal employment's cafeteria on May 28, 1996. The Office found that the evidence submitted was insufficient to warrant modification of its July 30, 1996 decision.

The Board has duly reviewed the case record in the present appeal and finds that the Office properly determined that appellant failed to meet her burden of proof in establishing that she sustained multiple medical conditions or disabilities causally related to factors of her federal employment.

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

In order to determine whether a federal employee has 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.⁴

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event, incident or exposure, the employee must submit rationalized medical opinion, based on a complete factual and medical background, supporting such a causal relationship.⁵

In the instant case, it is not disputed that appellant ate a chicken taco and spanish rice on May 28, 1996, while having lunch in the cafeteria of her federal employment. Consequently, the Office found that the claimed event, incident or exposure occurred at the time, place and in the manner alleged. However, the Office found that the medical evidence submitted was insufficient to establish that the food eaten in the cafeteria that day resulted in an injury. Appellant's own

¹ 5 U.S.C. §§ 8101-8193.

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

³ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *Kathryn Haggerty*, 45 ECAB 383 (1994).

statements concerning her belief that she sustained the above-mentioned diagnosed conditions because of the foods she ate in the cafeteria are irrelevant to the main issue of the present case, *i.e.*, whether appellant has submitted sufficient medical evidence to support her claim that she sustained the diagnosed conditions as a result of the May 28, 1996, incident. Appellant was advised of the deficiency in her claim on June 27, 1996 and afforded the opportunity to provide supportive evidence; however, sufficient medical evidence addressing whether any medical condition arose out of the May 28, 1996 incident has not been submitted.

Additionally, in a May 29, 1996 admissions medical report from Dr. Michael E. Arquilla, Board-certified in nephrology, appellant was diagnosed with acute gastroenteritis possible related to food intake now generally resolved; and in a discharge medical report dated June 2, 1996, Dr. Arquilla diagnosed appellant with having acute gastroenteritis secondary to food poisoning, type I diabetes, hypertension and indicated that she developed thrombophlebitis secondary to an IV site in the right antecubital fossa. In the May 29, 1996 medical report, Dr. Arquilla related the history of injury as:

“[Appellant] ate a chicken taco with spanish rice and subsequently developed headache, nausea and emesis and the emesis persisted for four to six hours. She began to feel poorly and sought attention at the medical clinic in the [employing establishment] where the nurse followed her closely because of her diabetes and continued emesis. It was noted her blood sugar fell less than 50. She was given glucose in the field and then sent to the emergency department.”

Appellant was admitted to St. Joseph Hospital, having been transferred from Martin Luther Hospital where she had been given intravenous fluids on the day of admission. In the June 2, 1996 report, Dr. Arquilla reiterated the history provided in his May 29, 1996 report, but added that appellant was hydrated and treated with regular insulin and subsequently reinstituted on a regimen of two shots per day of long-acting and regular insulin in the a.m. and before supper. He indicated that appellant had previously been treated with hydralazine and it was noted that her hypertension was poorly controlled, with a blood pressure of 160/110. Dr. Arquilla then stated:

“[Appellant] continued to have hyperglycemia, with blood sugars as high as 300 and for this reason endocrinological consultation with diabetic teaching was obtained. [Appellant] was then started on three shots per day....”

* * *

“Finally, she developed a thrombophlebitis secondary to an IV site in the right antecubital fossa, and for this she is being discharged on cipro. [Appellant’s] follow-up will be with Dr. [Tenzing Wangyal, Board-certified in internal medicine], on the day after discharge and Dr. [Francis H.] Rhie, [Board-certified in endocrinology, diabetes and metabolism] within two weeks.”

In the instant case, appellant relied on Dr. Arquilla’s medical reports to indicate that her diagnosed conditions of acute gastroenteritis secondary to food poisoning, type I diabetes, hypertension and the developed thrombophlebitis secondary to an IV site in the right antecubital

fossa, were the results of eating a chicken taco and spanish rice at lunch in the employing establishment's cafeteria on May 28, 1996. However, Dr. Arquilla did not perform any tests to confirm the cause of the condition, nor did he provide any basis for his conclusion beyond stating appellant's belief that her conditions were caused by eating a chicken taco and spanish rice for lunch in the cafeteria on May 28, 1996.⁶ Appellant also had a history of being a type I diabetic with hypertension, for which she had been treated for by Dr. Wangyal; however, Dr. Arquilla failed to distinguish these prior conditions from the diagnosed conditions of acute gastroenteritis secondary to food poisoning and thrombophlebitis secondary to an IV site in the right antecubital fossa. He did not provide a rationalized medical opinion, based upon reasonable medical certainty, that there was a causal connection between appellant's diagnosed conditions and specific workplace factors, including eating contaminated food.⁷ For example, Dr. Arquilla did not provide test results from the chicken taco's or spanish rice from the cafeteria to confirm any type of contamination, or provide a detailed explanation explaining how or why eating a chicken taco and spanish rice at lunch in the cafeteria on May 28, 1996, caused, precipitated or contributed the presence or occurrence of any specific medical conditions.⁸ In addition, the record shows that the weight of the medical evidence presented by Dr. Arquilla indicates that appellant suffered from uncontrolled diabetes and uncontrolled hypertension on the date of injury and that there were no other reported incidents by anyone else who ate in the cafeteria on the date of injury who experienced the same or a similar illness.⁹ Therefore, the medical reports submitted by Dr. Arquilla are of limited probative value and insufficient to establish appellant's claim for benefits. Appellant has failed to meet her burden of proof.

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.¹⁰ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence in the present case. Accordingly, the Office properly denied appellant's claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated January 13, 1997 and July 30, 1996 are affirmed.

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

⁶ *Augusta McElroy*, 33 ECAB 462 (1982).

⁷ *Id.*

⁸ *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship); *see also George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

⁹ *Augusta McElroy*, *supra* note 6.

¹⁰ *Charles H. Tomaszewski*, *supra* note 8.

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member