

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES P. CLARK and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Lehigh Valley, PA

*Docket No. 99-253; Submitted on the Record;
Issued April 17, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty on March 4, 1997.

In the present case appellant, a mailhandler, filed a traumatic injury claim alleging that he sustained a back injury causally related to lifting mail sacks. He indicated on the claim form that the date of injury was March 6, 1997. Appellant subsequently indicated that the date of injury was March 4, 1997.

By decision dated May 5, 1997, the Office of Workers' Compensation Programs denied the claim on the grounds that appellant had not established fact of injury. In a decision dated July 13, 1998, an Office hearing representative affirmed the prior decision.

The Board has reviewed the record and finds that appellant has not established a back injury in the performance of duty on March 4, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² 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. The second component is whether the

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

employment incident caused a personal injury and generally this can be established only by medical evidence.³

In the present case, the Office has not accepted that an incident occurred as alleged, noting that appellant initially provided inconsistent dates for the alleged lifting incidents.⁴ He has, however, identified March 4, 1997 as the date he believes that lifting sacks contributed to a back injury. A treatment note from a Department of Veterans Affairs health clinic dated April 9, 1997 reports that appellant asserted he was lifting heavy sacks on March 4, 1997. Although the employing establishment disputes that an employee would lift for eight hours, there does not appear to be any question that appellant worked on March 4, 1997 and that his regularly assigned duties as a mailhandler involve lifting mail sacks. As there is no contrary evidence that appellant did engage in lifting activity on March 4, 1997, the Board finds that appellant has established employment incidents on that date.

In order to meet his burden of proof, appellant must submit probative medical evidence on causal relationship between a diagnosed condition and the employment incidents. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.⁵ In the present case, the record does not contain sufficient evidence on causal relationship. Appellant submitted hospital form reports dated March 11 and 12, 1997 noting that appellant reported lifting mail sacks on March 6, 1997; in addition to containing an inaccurate history, there is no opinion on causal relationship between the employment and a diagnosed condition. The April 9, 1997 health clinic note does not provide an opinion on causal relationship. A report dated April 9, 1997 from Dr. Paul F. Duffy, a chiropractor, includes a history of lifting at work on March 4, 1997, but does not provide an opinion on causal relationship with a subluxation.⁶ In a report dated April 21, 1997, Dr. Scott Naftulin, an osteopath, diagnosed “acute mechanical work-related low back pain-recurrent-improving” without further explanation. He did not provide an accurate history of injury or a reasoned opinion on causal relationship.

The Board finds that the medical evidence does not contain medical evidence establishing an employment injury causally related to lifting at work on March 4, 1997.⁷ Accordingly, appellant has not met his burden of proof in this case.

³ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁴ There is, for example, a statement from a supervisor dated March 11, 1997 that appellant had initially stated March 6, then March 7 and then March 5, 1997 as the date of injury.

⁵ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

⁶ The report contains a diagnosis of subluxation based on x-ray and therefore Dr. Duffy is considered a physician under the Act. 5 U.S.C. § 8101(2).

⁷ The Board notes that appellant argues that the employing establishment was at fault in directing him to certain facilities for treatment. It is, however, a claimant’s burden to submit probative medical evidence establishing an employment-related injury and appellant has not done so in this case.

The decision of the Office of Workers' Compensation Programs dated July 13, 1998 is modified to reflect that appellant engaged in lifting activity on March 4, 1997 at work and is affirmed as modified.

Dated, Washington, D.C.
April 17, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member