

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TIMBERLE A. CERO and U.S. POSTAL SERVICE,  
POST OFFICE, Harrisburg, PA

*Docket No. 99-2270; Oral Argument Held June 6, 2000;  
Issued August 24, 2000*

Appearances: *Benjamin A. Cero, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*, for the Director, Office of Workers' Compensation Programs.

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an injury in the performance of duty.

On March 12, 1996 appellant, then a 33-year-old letter carrier, filed a notice of traumatic injury alleging that she sprained her left ankle while delivering mail when she stepped on a large dog bone in a driveway on March 30, 1995 and that inadequate treatment caused reflex sympathy disorder (RSD) to develop.<sup>1</sup>

On March 30, 1995 Dr. Gary L. Blacksmith, a Board-certified family practitioner, treated appellant for left foot pain. He stated that the cause of the pain was unknown, but noted that she had fallen in the past while walking on uneven pavement.

On November 8, 1995 Dr. John C. Rodgers, an orthopedic practitioner, treated appellant for chronic pain in her left foot and ankle. Dr. Rodgers stated that he could not identify a specific etiology, but that he suspected a minor soft tissue injury, which had become symptomatic. On December 14, 1995 and February 5, 1996 Dr. Rodgers diagnosed RSD of appellant's left foot.

On December 18, 1995 Dr. Ted D. Kosenske, a Board-certified anesthesiologist, treated appellant for ankle and foot pain. He noted a history of two severely sprained ankles in the past year. Dr. Kosenske stated that the pain could be sympathetically driven.

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<sup>1</sup> Appellant also filed a notice of recurrence of disability concerning the March 30, 1995 incident. That claim, A3-201841, was denied and the Board affirmed the denial. Docket No. 97-110 (issued September 21, 1998).

On January 4, 1996 Dr. Ronald M. Schlansky, a Board-certified internist, stated the fact that appellant's left foot was cooler than the right foot supported a diagnosis of RSD.

On February 26, 1996 Dr. Kosenske diagnosed RSD of appellant's left ankle based on appellant's clinical presentation and her response to lumbar sympathetic blocks. On March 15, 1996 he diagnosed RSD in appellant's left ankle secondary to the ankle injury she received the previous year. Dr. Kosenske indicated that his diagnosis was based on a positive response to lumbar sympathetic blocks.

On June 25, July 31 and September 11 1996, Dr. Rodgers diagnosed RSD due to a sprained ankle occurring on March 30, 1995.

By decision dated September 26, 1996, the Office of Workers' Compensation Programs denied appellant's claim because fact of injury was not established.

Appellant subsequently appealed the Office's decision.

By decision dated September 21, 1998,<sup>2</sup> the Board affirmed the September 26, 1996 Office decision denying benefits because the record was devoid of any rationalized medical evidence, based on a complete factual and medical background, explaining why appellant's RSD was contracted in the performance of duty.

On November 4, 1998 appellant requested reconsideration.

By decision dated March 23, 1999, the Office found that, because appellant's letter requesting reconsideration did not include new and relevant evidence, or new legal arguments, it was insufficient to warrant a review of the Office's prior decision.

On April 12, 1999 appellant again requested reconsideration.

In support of her request for reconsideration, appellant submitted a March 9, 1999 report from Dr. Rodgers. He noted that he had reviewed the history of injury and stated that "I do believe, within a reasonable degree of medical certainty, that the RSD appellant was diagnosed with was caused by the injuries she sustained while delivering mail ... on October 24, 1994 and/or March 30, 1995." Dr. Rodgers further stated that appellant's persistence of symptoms despite a paucity of physical findings was a common scenario. He stated that eventually appellant developed some temperature and color changes, which lead to the diagnosis of RSD. Dr. Rodgers also noted that the diagnosis was confirmed by epidural blocks performed by Dr. Kosenske.

Appellant also submitted a March 11, 1999 report from Dr. Kosenske. He stated that appellant told him that she injured her ankle in December 1995 after stepping in a hole. Dr. Kosenske stated that he diagnosed RSD due to abnormal pain, swelling and color in the foot. He noted that a series of lumbar sympathetic blocks afforded appellant complete resolution of pain and that an intravenous phentolamine test was positive for sympathetically maintained pain

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<sup>2</sup> *Timberle A. Cero*, Docket No. 97-236 (issued September 21, 1998).

phenomenon. Dr. Kosenske stated that this condition stemmed from appellant's accident delivering the mail because she was symptomatic after the incident and suffered no subsequent injuries.

Finally, appellant submitted a January 28, 1999 report from Dr. Allan B. Grossman, a podiatrist, reporting the results of a work capacity assessment. He stated that appellant could return to work for an 8-hour day with a limit of lifting no more than 20 pounds.

By decision dated June 23, 1999, the Office denied modification of the prior decision. In an accompanying memorandum, the Office indicated that the newly submitted evidence was insufficient to establish that appellant suffered an injury on March 30, 1995 in the performance of duty.

The Board finds that this case is not in posture for decision and will be remanded for further evidentiary development.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> has the burden of establishing the essential elements of his or her claim, including the fact 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 is causally related to the employment injury.<sup>4</sup> As part of this burden, the claimant must present rationalized medical evidence, based on a complete and accurate medical background, showing causal relationship.<sup>5</sup>

In the present case, Dr. Rodgers, an orthopedic practitioner, opined on March 9, 1999 that "I do believe, within a reasonable degree of medical certainty, that the RSD appellant was diagnosed with was caused by the injuries she sustained while delivering mail ... on October 24, 1994 and/or March 30, 1995." Although Dr. Rodgers' March 9, 1999 report is not sufficient to meet appellant's burden of proof, this evidence raises an uncontroverted inference of causal relationship between appellant's RSD and her employment injury on March 30, 1995 and is sufficient to require further development of the case record by the Office.<sup>6</sup>

On remand, the Office should further develop the medical evidence by obtaining a rationalized opinion addressing whether appellant's RSD was causally related to appellant's March 30, 1995 work injury. Moreover, the Office should obtain the file for appellant's October 24, 1994 ankle injury (Claim No. A3-201841) and combine it with the file for the March 30, 1995 ankle injury (Claim No. A3-217581) inasmuch as the subject matter of the claims are intertwined.<sup>7</sup> After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>5</sup> *Joseph T. Gulla*, 36 ECAB 516 (1985).

<sup>6</sup> *Reba L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Richard E. Konnen*, 47 ECAB 388 (1996).

The decision of the Office of Workers' Compensation Programs dated June 23, 1999 is hereby set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, D.C.  
August 24, 2000

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member