U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LANATTA BRASSEAU and U.S. POSTAL SERVICE,
POST OFFICE, Springfield, MO

Docket No. 97-919; Submitted on the Record;
Issued May 16, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.[1]

On September 11, 1996 appellant, then a 35-year-old mailhandler, filed a traumatic injury claim (Form CA-1) assigned number A11-151963 alleging that on that date she experienced pain in her hand, wrist, arm and shoulder.[2] Appellant stated that the mail was "way over my head and

[1] On October 14, 1999 the Board issued an order requiring the Office of Workers' Compensation Programs to submit the case record for the instant case within 30 days because the Office had failed to submit the case record within 60 days pursuant to 20 C.F.R. § 501.4. By letter dated October 13, 1999, the Board advised appellant that an extension of time had been granted to the Office until November 12, 1999 to deliver the case record. On January 12, 2000 the Board issued an Order Remanding Case because the Office failed to transmit the case record within 30 days of its October 13, 1999 request for the record. On February 3, 2000 the Office filed a petition to set aside the Order Remanding Case and Submission of the Record accompanied by the case record. The Board, hereby, grants the Office's petition inasmuch as the case record was received within 30 days of the Order Remanding Case.

[2] Prior to the instant claim, appellant filed a Form CA-1 assigned number A11-0112665 on October 9, 1991 for a left hand injury sustained on October 8, 1991. The Office accepted appellant's claim for friction compression injury of the left hand and fingers, and authorized scar tissue removal. On October 17, 1994 the Office granted appellant a schedule award for a 22 percent permanent impairment of the left hand for the period January 13, 1994 through January 23, 1995. On May 20, 1995 appellant filed a claim for a recurrence of disability (Form CA-2a). The record does not contain a decision rendered by the Office regarding appellant's recurrence claim. On June 18, 1994 appellant filed another Form CA-1 assigned number A11-0134006 for a hand and arm injury sustained on June 17, 1994.

was very difficult to work." Appellant stopped work on September 12, 1996 and returned to work on September 16, 1996.

By letter dated October 7, 1996, the Office advised appellant to submit additional factual and medical evidence supportive of her claim.

By decision dated November 22, 1996, the Office found the medical evidence of record insufficient to establish that appellant sustained a medical condition or disability causally related to the September 11, 1996 injury. In an accompanying memorandum, the Office found the evidence sufficient to establish that appellant sustained an injury at the time, place and in the manner alleged, but insufficient to establish that the claimed medical condition or disability was causally related to the September 11, 1996 injury.

An employee seeking benefits under the Federal Employees' Compensation Act[3] has the burden of establishing 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 limitations 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.[4] 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.[5]

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.[6] In this case, the Office accepted that appellant actually experienced the claimed incident. The Board finds that the evidence of record supports this incident.

The second component 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 or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.[7]

Regarding the second component, however, the Board finds that appellant has failed to establish that her hand and shoulder conditions were caused by the September 11, 1996

[3] 5 U.S.C. §§ 8101-8193.

[4] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Daniel J. Overfield*, 42 ECAB 718 (1991).

[6] *Elaine Pendleton*, *supra* note 4.

[7] 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

employment incident. In support of her claim, appellant submitted disability certificates dated September 11 and 20, and October 7, 1996 from Dr. Michael B. Grillot, an orthopedic surgeon. Dr. Grillot's disability certificates are insufficient to establish appellant's burden they failed to indicate a diagnosis and to discuss whether or how the diagnosed condition was caused by the September 11, 1996 employment incident.[8]

In further support of her claim, appellant submitted Dr. Grillot's medical treatment notes dated March 6, September 11 and 19 and October 10, 1996. Dr. Grillot's treatment notes revealed a medical history, his findings on physical examination and appellant's medical treatment. His treatment notes also revealed several diagnoses including, left shoulder, arm and hand pain, and an early onset of cubital tunnel, left carpal tunnel and left shoulder pain. Dr. Grillot's treatment notes are insufficient to establish appellant's burden because they failed to address a causal relationship between the diagnosed conditions and the September 11, 1996 employment incident.

Additionally, appellant submitted a September 23, 1996 report of Dan Cummings, an occupational therapist, providing his findings concerning her left upper extremity. An occupational therapist is not a physician within the meaning of the Act.[9] For this reason, Mr. Cummings' report does not constitute competent medical opinion evidence.

Dr. Grillot's October 23, 1996 medical report noted a history of appellant's shoulder and left arm pain as provided by appellant. He diagnosed carpal tunnel, cubital tunnel, wrist pain and shoulder pain in the left upper extremity. He stated that appellant has had similar symptoms in the past associated with overuse, but there was improvement with underhand activity. Dr. Grillot recommended that appellant perform underhand activity at that point, until her symptoms resolved. Dr. Grillot failed to state whether appellant's conditions were caused by the September 11, 1996 employment incident. Therefore, his report is insufficient to establish appellant's burden.

Inasmuch as appellant has failed to submit rationalized medical evidence establishing that her shoulder and hand conditions were caused by the September 11, 1996 employment incident, the Board finds that appellant has failed to satisfy her burden of proof in this case.

[8] *Daniel Deparini*, 44 ECAB 657, 659 (1993).

[9] 5 U.S.C. § 8101(2) states: "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law; *see Jerre R. Rinehart*, 45 ECAB 518 (1994).

The November 22, 1996 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
May 16, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member