

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICK M. BRAND and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 00-297; Submitted on the Record;
Issued January 2, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established disability commencing July 5, 1998 causally related to his July 10, 1998 employment injuries.

In the present case, appellant filed a traumatic injury claim on July 10, 1998 alleging that he hurt his calves, hamstrings, right shoulder and neck while pushing an APC onto scales on June 30, 1998. Appellant stopped work on July 5, 1998 and returned on July 10, 1998. The Office of Workers' Compensation Programs accepted the claim for sprain of the shoulder and arm on December 30, 1998. The employing establishment terminated appellant's employment effective July 10, 1998 due to lack of attendance.

On January 7, 1999 appellant filed a claim for compensation on account of traumatic injury occupational disease (Form CA-7) commencing July 5 through August 28, 1998. By decision dated September 1, 1999, the Office determined that appellant was not entitled to compensation for wage loss commencing July 5, 1998.

The Board has reviewed the record and finds that appellant has not established that he had an employment-related disability commencing July 5, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

The Board notes that the record indicates that appellant stopped working on July 5, 1998 and was terminated by the employing establishment due to abandonment of employment when he returned on July 10, 1998. In order to establish entitlement to compensation, appellant must submit medical evidence that establishes an employment-related disability from his position as a casual employee clerk on or after July 5, 1998.

In this case, the medical evidence is not of sufficient probative value to meet appellant's burden of proof. In an undated note, Dr. Rodney Brand, a chiropractor and appellant's brother, indicated that appellant was precluded from working until further notice. Moreover, as Dr. Brand did not diagnose a subluxation as demonstrated by x-ray to exist, he is not a "physician" under the Act.³ However, as the note is undated, it is of no probative value for the specific period of compensation claimed. In form reports dated October 1, 1998 and January 8, 1999, Dr. Brand indicated that appellant was totally disabled from July 1, 1998 and checked a box "yes" indicating that appellant's diagnosed conditions were related to his employment injury. However, as appellant is not claiming compensation prior to July 5, 1998 *i.e.*, commencing July 1, 1998, these reports have no probative value. Likewise the chart notes dated July 1, 1998 from Dr. Brand are not pertinent to the issue of disability as appellant is not claiming compensation as of July 1, 1998. The x-ray reports dated July 5 and November 13, 1998 by Dr. Byron J. Marr, an osteopath, and Dr. Phyllis Frostenson, a radiologist, respectively, do not address the issue of disability and therefore are irrelevant. In the July 5, 1998 emergency room report, the emergency room physician, Dr. Robert Hassett, an osteopath, specifically advised that appellant could return to work on July 5, 1998 with restrictions imposed on lifting, pushing and pulling.

Accordingly, the record is devoid of any medical evidence as to a disability commencing on or after July 5, 1998 causally related to the accepted employment injuries. Appellant was advised of this deficiency by letter dated January 22, 1999. Accordingly, appellant has not met his burden of proof in this case.

³ 5 U.S.C. § 8101(2).

The decision of the Office of Workers' Compensation Programs dated September 1, 1999 is affirmed.

Dated, Washington, DC
January 2, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member