

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL MULLANEY and U.S. POSTAL SERVICE,
POST OFFICE, Marblehead, MA

*Docket No. 01-633; Submitted on the Record;
Issued October 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On August 8, 2000 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a dog bite on his left leg while delivering mail.

The record contains a medical note releasing appellant to work on August 8, 2000 by Ms. Susan E. Wicks, a nurse practitioner.

By letter dated September 1, 2000, the Office of Workers' Compensation Programs advised appellant that additional factual and medical evidence was required. The Office also informed appellant that a report by a nurse practitioner was insufficient and that medical notes must be signed by a physician under the Federal Employees' Compensation Act. Lastly, the Office afforded appellant 30 days to submit the necessary information to support his claim.

In response to the Office's request appellant resubmitted Ms. Wicks' note and an authorization for medical report dated September 22, 2000.

By decision dated October 12, 2000, the Office found that appellant had established that he actually experienced the alleged incident, but that the record contained no supporting medical evidence. Thus, the Office denied his claim on the basis that he failed to establish fact of injury.

The Board finds that appellant has not established an injury in the performance of duty.

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to

establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.¹

In the instant case, Office accepted that appellant experienced the claimed event; however, it notified appellant that the evidence submitted was insufficient to support his claim, and allowed 30 days for a response.

Appellant submitted a September 22, 2000 authorization for medical report and a Ms. Wicks' report in response to the Office's request for additional evidence, however, the Office never received any further medical evidence relative to his claim. The only medical evidence received by the Office prior to the October 12, 2000 decision was a note signed by Ms. Wick, a nurse practitioner. However, a nurse practitioner is not a "physician" within the meaning of the Act and is, therefore, not competent to give a medical opinion.² Because the note was not signed by a physician, it cannot be considered competent medical evidence.³

Causal relationship must be substantiated by reasoned medical opinion evidence, which is appellant's responsibility to submit.⁴ Because appellant failed to submit any such evidence to support that his federal employment caused an injury, the Board finds that he failed to submit a *prima facie* claim for compensation.

¹ *Gary J. Watling*, 52 ECAB ____ (Docket No. 00-634, issued March 1, 2001).

² *Guadalupe Julia Sandoval*, 41 ECAB 703 (1990); *Ausberto Guzman*, 25 ECAB 362 (1974).

³ *Diane Williams*, 47 ECAB 613 (1996).

⁴ *Gary J. Watling*, *supra* note 1.

The October 12, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.⁵

Dated, Washington, DC
October 9, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ Appellant submitted new evidence to the Board. The Board cannot consider new evidence on appeal; however, appellant can submit the new evidence to the Office and request reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.138(b); *see* 20 C.F.R. § 501.2(c).