

**United States Department of Labor
Employees' Compensation Appeals Board**

BARBARA J. FLEMING, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Oakland, CA, Employer**

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**Docket No. 04-243
Issued: March 17, 2004**

Appearances:
Barbara J. Fleming, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On November 5, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated June 12 and September 4, 2003 denying her claim that she sustained an injury in the performance of duty. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

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

FACTUAL HISTORY

On April 6, 2003 appellant, then a 51-year-old casual mail handler, filed a claim for a strained stomach muscle which she attributed to pulling a pallet and loading and unloading cages on December 12, 2002. She stated that her physician originally thought she had endometriosis. The employing establishment controverted the claim noting that appellant's length of

employment was from December 2 to 7, 2002 and she was not in the performance of duty on the alleged date of injury.

In a letter dated May 6, 2003, the Office requested additional factual information and medical evidence. Appellant was requested to explain the discrepancy as to the date of the alleged injury on December 12, 2002 as the employing establishment had indicated her last day of work was December 7, 2002. She was asked to explain why the alleged injury was not immediately reported to her supervisor. Appellant was further asked to explain why she did not immediately seek medical attention and was requested to have her attending physician submit a detailed, narrative medical report which included a history of the injury and all prior industrial and nonindustrial injuries to similar parts of her body along with a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis of any condition resulting from this injury and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to her claim and allotted appellant 30 days within which to submit the requested information.

In a May 8, 2003 statement, appellant explained that the injury date was December 6, 2002 and that the date of December 12, 2002 was an error. She advised that she was working at Building 512 on the loading dock pulling pallets to the trucks. Appellant went to the supervisor and sat at the lunch area for an hour. Appellant submitted a form report dated May 8, 2003 certifying the truth of her claim along with a letter from the employing establishment indicating she was not treated at an employing establishment medical facility for the claimed injury. However, no medical evidence was submitted.

By decision dated June 12, 2003, the Office denied appellant's claim on the basis that fact of injury had not been established. Specifically, the Office found that the claimed event occurred but that no medical evidence was submitted which showed a medical condition related to the claimed event.

Appellant requested reconsideration on June 21, 2003 and submitted a June 28, 2003 statement in which she described the December 6, 2002 injury on the loading dock of Building 512. She stated that she pulled a pallet weighing over 70 pounds up and out of a truck and pulled cages on the loading dock and that her supervisor was Tate. Appellant advised that she had been in pain since the injury. Laboratory test results dated April 14, 2003 were submitted, along with a June 30, 2003 medical report from Dr. Charles Berletti, a Board-certified family practitioner, who, in his report, noted a history of appellant's visits. He advised that appellant had presented for a routine health care maintenance visit on June 25, 2002 and a review of systems was negative, including that for pelvic pain. Appellant was next seen on January 8, 2003 complaining of bilateral pelvic pain which, she stated, had been present for about a month and related the onset of the pain to an incident involving her work. Other qualities of her pain were noted. The physician reported that a pelvic examination was performed and other workup begun. In a March 3, 2003 follow-up visit, appellant's workup was evaluated and essentially negative findings were presented. On April 21, 2003 appellant underwent a diagnostic laparoscopy which revealed abnormal lesions between the sigmoid colon and the adjacent abdominal wall. In a May 14, 2003 followup, appellant reported her pain had improved. On June 11, 2003 she reported a recurrence of pain and was referred to her primary care provider.

By decision dated September 4, 2003, the Office denied modification of its prior decision, finding that the medical evidence did not establish that a condition had been diagnosed in connection with the claimed event.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 limitation 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. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.¹ To meet his or her burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.²

ANALYSIS

In the instant case, the Office concluded, and the Board agrees, that the evidence of record was sufficient to establish that the claimed event occurred on December 6, 2002 as alleged. However, appellant has submitted insufficient evidence to establish that a medical condition was diagnosed and that she has a medical condition causally related to the event claimed.

The question of causal relationship is a medical one and must be resolved by medical evidence.³ To establish causal relationship, appellant must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing his or her injury and, taking these into consideration as well as findings upon examination of appellant and his or her medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁴

Although Dr. Berletti noted that abnormal lesions were found following a diagnostic laparoscopy, he failed to diagnose a medical condition, provide a history of the injury or offer an opinion on how appellant's employment could have caused or aggravated her condition. As Dr. Bertetti failed to diagnose a specific medical condition or relate the abnormal lesions to the events of December 6, 2002, appellant has failed to discharge her burden of proof.⁵ The fact that

¹ *Gary J. Watling*, 52 ECAB 278 (2001); *Kathryn A. Tuel-Gillem*, 52 ECAB 451 (2001).

² *See id.*, *Gary J. Watling*.

³ *Roger Williams*, 52 ECAB 332 (2001); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

⁴ *See Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

work activities produced pain or discomfort revelatory of an underlying condition does not raise an inference of causal relation.⁶

Accordingly, appellant has failed to submit a rationalized medical opinion addressing the issue of causal relationship and, therefore, failed to establish fact of injury. As she has failed to establish fact of injury, she is not entitled to compensation.⁷

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 17, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Jimmie H. Duckett*, 52 ECAB 332 (2001).

⁷ On appeal appellant submitted medical evidence. The Board's jurisdiction is limited to evidence which was before the Office at the time it rendered the final decision. Inasmuch as this evidence was not considered by the Office, it cannot be considered on review by the Board. 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting such evidence to the Office as part of a reconsideration request.