

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLEN ROBINSON and U.S. POSTAL SERVICE,
POST OFFICE, Greenville, S.C.

*Docket No. 96-2675; Submitted on the Record;
Issued August 7, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

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

The Board has reviewed the case record and finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

On November 6, 1994 appellant, then a 40-year-old mail handler, filed a claim for compensation alleging that she injured her back and hips that day while in the performance of duty. The Office of Workers' Compensation Programs denied appellant's claim by decision dated August 21, 1995 on the grounds that appellant had failed to establish fact of injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence, 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 are causally related to the employment injury.²

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. The second

¹ 5 U.S.C. §§ 8101-8193.

² *Corlisa L. Sims (Smith)*, 46 ECAB 172 (1994).

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.³

In the present case, the Office accepted that appellant experienced an employment incident on November 6, 1994 as alleged. The issue is whether appellant has submitted sufficient medical evidence to establish her claim and the Board finds that appellant has not met her burden of proof in this case. The medical evidence submitted prior to the August 21, 1995 Office decision consists of a November 8, 1994 medical report, from Dr. Barbara Sue Repik, a specialist in internal medicine, a February 6, 1995 medical report, from Dr. James W. McPhail, appellant's treating physician and a Board-certified orthopedic surgeon and medical reports dated February 9, 17 and 27, 1995 and March 29, 1995 from Dr. Robert G. Schwartz, Board-certified in physical medicine and rehabilitation. Dr. Repik merely indicated that appellant should remain out of work until cleared by Dr. McPhail; and referred her to see him as soon as possible. Given the absence of a diagnosis or any objective medical finding, this report of limited probative value. In his February 6, 1995 report Dr. McPhail noted upon examination that appellant had neck and back contusion and referenced appellant's history of injury as occurring on November 6, 1994; however, the doctor did not submit a rationalized medical opinion establishing a causal relationship between the accepted incident and her medical condition and, therefore, is of limited probative value. Dr. Schwartz noted appellant's prior October 30, 1993 low back pain injury and, upon examination and testing, noted that she possibly reaggravated her back and that she had a possible right C6 facet. The doctor also read an electrodiagnostic study as normal, noting however that an ultrasound examination performed on February 27, 1995 revealed some ligamentous laxity. However, Dr. Schwartz failed to submit a rationalized medical narrative opinion establishing a causal relationship between appellant's medical condition and the accepted incident.⁴

Since appellant did not submit supporting medical evidence, she has not established an injury in the performance of duty on November 6, 1994.

³ *Jerry A. Miller*, 46 ECAB 243 (1994).

⁴ By letter dated May 2, 1995 the Office advised appellant that she needed to submit additional information regarding her claim. She was also asked to explain why she waited there months from the time of the incident to see Dr. McPhail. Appellant's response did not address this issue.

The decision of the Office of Workers' Compensation Programs dated August 21, 1995 is affirmed.

Dated, Washington, D.C.
August 7, 1998

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member