

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY E. WESTFIELD and U.S. POSTAL SERVICE,
POST OFFICE, Fort Wayne, IN

*Docket No. 99-1888; Submitted on the Record;
Issued September 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

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

On February 8, 1997 appellant, then a 36-year-old mailhandler, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1), alleging that, on November 16, 1996, she was lifting mail hampers and injured her neck and back. She did not stop work.¹ Appellant did not submit any evidence in support of her claim.

In a letter dated February 27, 1997, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a factual statement and various records including: itemized hospital/patient statements and itemized prescription history from September 1993 to March 1997; emergency room records dated November 16, 1996; a January 9, 1997 x-ray of the cervical spine; a February 5, 1997 medical report prepared by Dr. Alan W. McGee, a Board-certified orthopedic surgeon; a February 18, 1997 hospital admission report as well as an operative note; and a February 26, 1997 progress note from Dr. McGee. Her narrative statement provides a description of the alleged incident and the treatment that followed. Appellant indicated that she did not file a claim immediately after the incident because she was not sure what was physically wrong with her. The emergency room records from November 16, 1996 indicated appellant was treated for pleurisy, with no mention of a work-related injury. The

¹ Appellant was a casual employee who entered duty on August 19, 1996 and was reappointed on November 17, 1996. Her appointment was to expire on December 31, 1996; however, she was terminated from employment on December 5, 1996 for unacceptable attendance.

January 9, 1997 cervical spine x-ray indicated a normal cervical trauma series with no acute process noted. The medical report dated February 5, 1997 from Dr. McGee provided a history of the injury on November 16, 1996 and noted that appellant experienced sharp pain in her neck which radiated to her shoulder. He noted that this pain dissipated and recurred and since that time appellant had experienced persistent neck, right arm and shoulder pain. Dr. McGee noted the results of a recent magnetic resonance imaging (MRI) report which revealed a large C4 herniated disc. He diagnosed appellant with a C4 radiculitis, secondary to the herniation and recommended surgery. The hospital admission report and operative note of February 18, 1997 provided a history of the alleged employment-related injury with diagnoses of C3-4 herniated disc, with C4 radiculitis. The February 26, 1997 progress note from Dr. McGee indicated appellant's recovery post surgery and noted that she was doing well and had experienced relief from her pain.

In a decision dated April 8, 1997, the Office denied appellant's claim on the grounds that the medical evidence was not sufficient to establish that her condition was caused by the alleged injury on November 16, 1996 as required by the Federal Employees' Compensation Act.² The Office noted that none of the medical reports submitted documented a relationship between any work injury or activities and the diagnosed condition.

Appellant, through her attorney, requested a hearing before an Office hearing representative. The hearing was held January 21, 1998. At the hearing, appellant testified as to the circumstances surrounding the injury and noted that she was congested at the time of the injury and was in pain. Appellant stated she did seek medical attention for her congestion; however, she was not examined. After the hearing, appellant submitted progress notes from April 9 and August 13, 1997 along with other duplicative medical records.³ The progress notes documented appellant's progress post surgery and noted that appellant experienced neck stiffness and soreness as well as spasms. Dr. McGee indicated that appellant was progressing well.

By decision dated March 20, 1998 and finalized on March 24, 1998, the hearing representative affirmed the Office's April 8, 1997 decision.

By letter dated January 29, 1999, appellant, through her attorney, requested reconsideration of the prior decision and submitted a report from Dr. Milton M. Morgan, a general surgeon, whose report dated December 1, 1998, indicated that appellant stated that she had to stop work because of her November 16, 1996 injury at the employing establishment. He agreed with appellant's version of the facts and noted that appellant was able to return to work light duty.

By merit decision dated April 15, 1999, the Office denied modification of its prior decision on the grounds that appellant did not submit sufficient evidence to warrant modification of the prior decision.

² 5 U.S.C. §§ 8101-8193.

³ Evidence that repeats or duplicates evidence already in the case record has not evidentiary values; *see Daniel Deparini*, 44 ECAB 657 (1993).

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty, causally related to the factors of her federal employment.

An employee seeking benefits under the 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 filed within the applicable time limitation 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 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

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

Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁸

In this case, it is not disputed that appellant was lifting mail hampers on November 16, 1996. However, the medical evidence is insufficient to establish that the incident

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁶ *Elaine Pendleton*, *supra* note 4.

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

⁸ *James Mack*, 43 ECAB 321 (1991).

caused an injury. The February 5, 1997 report from Dr. McGee documented a three-month history of pain in appellant's neck and diagnosed a disc herniation at the C3-4 level. He reiterated the history of the injury appellant provided to him; however, the doctor did not provide a specific and rationalized opinion as to the causal relationship between appellant's employment and her diagnosed condition. Dr. McGee did not explain how and why specific activities would have caused or aggravated the claimed condition. This is particularly important where the most contemporaneous medical evidence indicated that there was no known injury. The medical records from the date of injury indicated that appellant was being treated for pleurisy. The first mention of back pain was on January 14, 1997 in a hospital service document, nearly two months after the alleged injury. This document did not mention a work-related injury.

Dr. Morgan submitted a medical report dated December 1, 1998, in which the doctor indicated, appellant "stated that she had to stop work because of her November 16, 1996 injury at the [employing establishment] in Fort Wayne, Indiana. I agree that this is factual and further that she is now able to resume work -- light duty." He did not provide a complete and accurate history of the November 16, 1996 injury, nor did he provide findings upon physical examination, diagnosis or a well-reasoned discussion explaining how he arrived at the opinion that appellant's condition is causally related to appellant's employment. The person seeking compensation benefits has the burden of proof to establish the essential elements of the claim. Appellant has failed to do this. Her own unsupported assertion of an employment relationship is not proof of the fact. In a case such as this, proof must include supporting rationalized opinion of qualified medical experts, based on complete and accurate factual and medical backgrounds, establishing that the implicated incidents caused or materially adversely affected the ailments producing the work disablement.⁹ The Board finds that appellant has not met the fundamental prerequisite of the Act with respect to her claim.

⁹ See *Margaret A. Donnelly*, 15 ECAB 40 (1963).

The decision of the Office of Workers' Compensation Programs dated April 15, 1999 is hereby affirmed.

Dated, Washington, DC
September 22, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member