

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SOCORRO VAZQUEZ and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 01-644; Submitted on the Record;
Issued November 14, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

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

On January 7, 1999 appellant, then a 37-year-old part-time clerk, filed a claim alleging that on January 6, 1999 she injured her right hand and back while keying in parcels. She did not stop work.

In support of her claim, appellant submitted employing establishment health unit records dated January 6, 1999 and a narrative statement. The employing establishment health unit records noted that appellant presented with complaints of pain in her right palm and neck which appellant attributed to her keying duties. The employing establishment's physician indicated that appellant denied any traumatic injury, contusion, lifting, pushing or pulling. Appellant indicated that she was keying for one-half hour before her symptoms occurred. She further indicated that she previously had these problems. Appellant's narrative statement indicated that she experienced sharp pain in her right hand and across her back while she was keying.

In a letter dated January 20, 1999, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence needed to establish her claim and requested she submit such evidence. The Office requested that appellant submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted a certificate to return to work and an authorization for medical attention. The certificate to return to work dated January 27, 1999 indicated that appellant could return to light duty with restrictions on pushing, pulling, lifting and keying. The authorization for medical attention noted that appellant sustained an injury to her right hand and upper back and indicated that she could return to work subject to restrictions.

In a decision dated March 17, 1999, 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 January 6, 1999 as required by the Federal Employees' Compensation Act.¹

By letter dated December 29, 1999, appellant requested an oral hearing before an Office hearing representative. She also submitted additional medical evidence.

By decision dated March 16, 2000, the Office denied appellant's request for a hearing. The Office found that the request was not timely filed. Appellant was informed that her case had been considered in relation to the issues involved and that the request was further denied for the reason that the issues in this case could be addressed by requesting reconsideration from the district Office and submitting evidence not previously considered.

By letter dated March 16, 2000, appellant requested reconsideration and submitted additional medical evidence. An x-ray of the cervical spine dated October 25, 1999, noted a congenital fusion of C4-5 which had resulted in under development of distal segments. The medical report from Dr. Larry S. Kramer, an osteopath, dated October 25, 1999, indicated a history of appellant's injury on January 6, 1999. He did not provide contemporaneous notes from his examination, however, he indicated that appellant's injuries were a direct result of her work-related duties and occurred during the course of employment on January 6, 1999. Dr. Kramer further noted that appellant had a history of pain and discomfort in her neck which started in 1994 and she sought treatment for this pain in 1996. The electromyogram (EMG) dated March 28, 2000 indicated that the nerve conduction studies were within normal limits with no evidence of nerve entrapment. The medical report from Dr. William H. Simon, a Board-certified orthopedist, dated June 12, 2000, noted a history of appellant's condition beginning in 1994. He noted upon physical examination appellant experienced discomfort on range of motion on both shoulders, range of motion of wrists revealed dorsiflexion of 75, palmar flexion 85, there was good grip strength bilaterally, good fist strength and normal active and passive motion about all the fingers of the hands. Dr. Simon diagnosed appellant with cervical discogenic syndrome with right greater than left cervical radicular symptoms. He indicated that he could not determine when appellant's disc herniation occurred, however, he attributed the condition to appellant's injury in 1994. Dr. Simon noted that appellant over exerted herself in 1996 and 1999. He indicated that appellant was not capable of performing her job since her work incident in 1994.² In a prescription note dated June 12, 2000, Dr. Simon diagnosed appellant with cervical disc syndrome. Appellant also submitted an affidavit dated July 24, 2000, which noted a history of appellant's condition beginning in 1994. She gave a detailed analysis of her condition at that time. Appellant indicated that on January 6, 1999 she aggravated her underlying injury from 1994.

¹ 5 U.S.C. §§ 8101-8193.

² Appellant has filed two other claims for injuries sustained in the performance of duty, a November 12, 1995 injury, case number A3-223830 and a March 17, 1996 injury, case number A3-223830. In a decision dated March 6, 1997, the Office denied appellant's claim for compensation in case number A3-223830. These cases are not before the Board.

By decision dated September 29, 2000, the Office modified its prior decision to the extent that the incident was established, however, appellant failed to demonstrate that her condition was causally related to her employment duties.

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

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 is causally related to the employment injury.”³ 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.⁴

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.⁵ In some traumatic injury cases, this component can be established by an employee’s uncontroverted statement on the Form CA-1.⁶ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee’s statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁷ A consistent history of the injury as reported on medical reports, to the claimant’s supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁸

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.⁹

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Rex A. Lenk*, 35 ECAB 253, 55 (1983).

⁸ *Id.* at 255-56.

⁹ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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.¹⁰

In this case, it is not disputed that appellant was performing her keying duties on January 6, 1999. However, the medical evidence is insufficient to establish that the incident caused an injury. The only report supporting a causal relationship between appellant's employment and her diagnosed condition is Dr. Kramer's report dated October 25, 1999. He indicated that appellant's injuries were a direct result of her work-related duties and occurred during the course of employment on January 6, 1999. Although Dr. Kramer's opinion somewhat supports causal relationship in a conclusory statement, he provided no medical reasoning or rationale to support such statement. The Board has found that vague and unrationalized medical opinions on causal relationship have little probative value.¹¹ Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Simon, in his report dated June 12, 2000, diagnosed appellant with cervical discogenic syndrome with right greater than left cervical radicular symptoms. He indicated that he could not determine when appellant's disc herniation occurred; however, he attributed the condition to appellant's injury in 1994. Dr. Simon noted that appellant overexerted herself in 1996 and 1999. However, he did not, in this report or other notes, specifically address the causal relationship between appellant's condition and her factors of employment. Additionally, Dr. Simon's notes did not include a rationalized opinion regarding the causal relationship between appellant's neck condition and the factors of employment believed to have caused or contributed to such condition.¹² For example, Dr. Simon did not explain how the act of keying would cause or aggravate appellant's condition nor did he explain how appellant's preexisting congenital neck condition may have affected her condition. Even though Dr. Simon noted that appellant was experiencing symptoms of her neck and hand conditions which were exacerbated by her work duties, without any further explanation or rationale, such report is insufficient to establish a causal relationship.¹³ Therefore, these documents are insufficient to meet appellant's burden of proof.

¹⁰ *James Mack*, 43 ECAB 321 (1991).

¹¹ *See Theron J. Barham*, 34 ECAB 1070 (1983) (where the Board found that a vague and unrationalized medical opinion on causal relationship had little probative value).

¹² *Id.*

¹³ *Lucrecia M. Nielson*, 42 ECAB 583, 594 (1991).

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.¹⁴

The decision of the Office of Workers' Compensation Programs September 29, 2000 is hereby affirmed.

Dated, Washington, DC
November 14, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁴ With her appeal, appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c).