

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ELLIOTT L. CHAMBERLAIN and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Pittsburgh, Pa.

*Docket No. 97-1056; Submitted on the Record;
Issued December 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

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

On July 5, 1995 appellant, then a 42-year-old mechanized vehicle operator, filed a claim for compensation alleging that he first became aware that his left shoulder pain was causally related to his federal employment in April 1995.

On July 6, 1995 the employing establishment controverted appellant's claim, stating that appellant had not worked in his bid assignment "in well over a year" and that prior to that he had only worked in that position sporadically.¹ The employing establishment also stated that appellant, through his seniority, elected a position as a "power ox" driver, which are mechanized carts used to dispatch mail containers throughout the facility. Appellant's responsibilities included hooking up mail containers to the vehicle and then hauling the containers to their appropriate locations throughout the facility. The employing establishment noted that there is little walking required of the driver as most of the eight-hour shift is spent driving the vehicle.

By letter dated August 14, 1995, the Office of Workers' Compensation Programs requested that appellant submit detailed factual and medical information regarding his claim including how the injury occurred, a medical report specifically addressing a history of injury, prior treatment for this or related conditions, objective findings and results of tests and x-rays, a diagnosis, treatment given, a prognosis for recovery, extent of disability, and a clear opinion on the relationship of the diagnosed condition to specific factors of federal employment. The Office also advised appellant that the employing establishment had controverted his claim and advised the Office that he had not worked in his assigned position for over a year, but had been assigned, as a consequence of his seniority and choice, as a driver of a "power ox" mechanized vehicle which required very little lifting.

¹ Appellant's bid position was mail handler.

On November 21, 1995 the Office, in a decision, denied appellant's claim on the grounds that the medical evidence of record failed to establish that appellant's medical condition was causally related to factors of his federal employment. On December 11, 1995 appellant requested a review of the written record. In a decision issued on February 22, 1996 and finalized on February 23, 1996, the hearing representative affirmed the prior decision, finding that appellant's assertion of disability was not supported by the medical evidence of record. On May 17, 1996 appellant requested reconsideration of the hearing representative's decision. On August 21, 1996 the Office, in a merit decision, denied appellant's request for reconsideration. On September 4, 1996 appellant requested reconsideration of the Office's August 21, 1996 decision denying his earlier request for reconsideration. On December 16, 1996 the Office, in a merit decision, denied appellant's request for reconsideration.

The Board has duly reviewed the record and finds that the Office properly denied appellant's request for reconsideration.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.² As appellant filed his appeal with the Board on January 14, 1997, the only decisions properly before the Board are the February 22, 1996 decision of the hearing representative affirming the Office's November 21, 1995 decision denying benefits, and the August 21 and December 16, 1996 decisions denying appellant's application for review.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his claim, including the fact that he 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 is causally related to the employment injury.³ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. 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

² *Oel Noel Lovell*, 42 ECAB 537 (1991); 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ *Corlisa L. Sims (Smith)*, 46 ECAB 172 (1994).

of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

There is no dispute that appellant is a federal employee and that he filed a timely claim for compensation benefits. Nonetheless, the Board finds that appellant has not established that he sustained an injury in the performance of duty causally related to factors of his federal employment.

In a duty status report dated July 3, 1995, Dr. Alan H. Klein, appellant's treating physician and an orthopedic surgeon, stated that appellant's left shoulder pain "could happen as a result of work" that appellant stated he performed. He released appellant to light duty effective the following day. However, in a medical report of the same day, Dr. Klein stated that appellant had a four-month history of left shoulder pain but was "not sure of what caused the problem." From August 1995 to July 1996, Dr. Klein submitted monthly medical reports stating essentially that appellant had left anterior shoulder pain caused by overhead activities. In an August 24, 1995 medical report, Dr. Klein noted that appellant stated that his shoulder condition was work related. In none of these reports, however, did Dr. Klein address whether appellant's shoulder injury was causally related to factors of his federal employment.

In a March 20, 1996 medical report, Dr. Klein stated that during the course of appellant's treatment, he was made aware of the range of his activities including "repetitive overhead lifting with his shoulder abducted and externally rotated," which he concluded "clearly could result in the loss of left shoulder stability." Dr. Klein's opinion, however, is of diminished weight inasmuch as it is equivocal and inasmuch as he failed to provide a medical rationale for his conclusion.⁵

Accordingly, the Board finds that appellant failed to meet his burden of proof of establishing that he sustained an injury in the performance of duty causally related to factors of his federal employment.

⁴ *Ruby Fish*, 46 ECAB 276 (1994).

⁵ *Geraldine H. Johnson*, 44 ECAB 745, 749 (1992).

The decisions of the Office of Workers' Compensation Programs dated December 16, August 21 and February 23, 1996 are affirmed.

Dated, Washington, D.C.
December 1, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member