

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SAUNDRA T. DUBOSE and U.S. POSTAL SERVICE,
POST OFFICE, East Lyme, Conn.

*Docket No. 95-2291; Submitted on the Record;
Issued February 11, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a cervical strain, in the performance of duty as alleged (claim no. A1-319930); and (2) whether appellant has met her burden of proof in establishing that she sustained carpal tunnel syndrome in the performance of duty as alleged, (claim no. A1-319931).

The Board has duly reviewed the record in the present, appeal for claim no. A1-319930 and finds that the Office of Workers' Compensation Programs properly determined that appellant failed to meet her burden of proof in establishing that she sustained a cervical strain in the performance of duty, as alleged. The Board also finds that appellant's appeal in claim no. A1-319931 is not in posture for decision.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 limitations 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.² 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.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

¹ 5 U.S.C. § 8101.

² *Joe Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying 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 of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

In this case, appellant filed an occupational disease claim on April 6, 1994 (claim no. A1-339930) alleging that she overextended herself, when stretching to deposit mail in mailboxes causing cervical strain to the neck, shoulders and upper back, while performing her duties as a rural letter carrier, beginning January 15, 1994 and continuing. The Office denied appellant's claim on September 1, 1994. By letter dated June 15, 1995, from her United States Senator, appellant requested reconsideration of the September 1, 1994 decision. On May 9, 1995 appellant appealed the September 1, 1994 decision to the Board. By decision dated July 3, 1995, after a merit review, the Office denied appellant's claim finding that the evidence submitted was insufficient to establish appellant's claim.⁵

The medical evidence in support of appellant's claim, consists of physical therapy progress notes covering the period March 23 through April 15, 1994. The progress notes revealed that appellant received physical therapy treatments, for her neck, back and shoulders. The progress notes did not include a diagnosis, except for one of cervical strain which was provided by the treating physician. Nor did they provide a rationalized medical opinion causally relating a condition to employment factors identified by appellant as the proximate cause of her condition. However, even if the progress notes had included such information they would have been of no probative value as a physical therapist is not considered a doctor under the Act.⁶ By letters dated May 11 and August 10, 1994, the Office advised appellant of the specific type of evidence needed to establish her claim for cervical strain, but appellant failed to respond to the

⁴ *Id.*

⁵ The record contains a decision on reconsideration dated July 3, 1995, concerning both of appellant's claims, A1-319930 and A1-319931. It is well established that the Board and the Office may not simultaneously have jurisdiction over the same issue. See *Douglas E. Billings*, 41 ECAB 880 (1990). Since appellant filed an appeal of both claims with the Board on May 9, 1995, the July 3, 1995 Office decision is null and void.

⁶ Section 8101(2) of the Act provides that health care providers such as nurses, acupuncturists, physician's assistants, and physical therapists are not physicians under the Act. Thus, their opinions do not constitute rationalized medical opinions and have no weight or probative value.

Office's request within the allotted time. As appellant had not complied with the Office's request for the medical evidence necessary to substantiate her claim, she has failed to meet her burden of proof.

Further, the Board finds that appellant's appeal of the Office's decisions denying her claim for carpal tunnel syndrome is not in posture for decision. After two attempts to obtain the record for this claim the record has not been received by the Board. Therefore, the case will be remanded to the Office for reconstruction of the case record in claim no. A1-339931. After which the Office should issue an appropriate decision and then forward the record to the Board.

The decision of the Office of Workers' Compensation Programs in claim no. A1-339930 dated September 1, 1994 is affirmed, the September 1 and December 12, 1994 decision in claim no. A1-339931 are set aside and the case is remanded for further action consistent with this order.

Dated, Washington, D.C.
February 11, 1998

George E. Rivers
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member