

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KIM JACKSON and U.S. POSTAL SERVICE,  
CAROL STREAM GENERAL MAIL FACILITY,  
Carol Stream, Ill.

*Docket No. 95-2752; Submitted on the Record;  
Issued February 6, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether appellant has established that she sustained a right arm injury in the performance of duty on August 29, 1994 as alleged; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing on the grounds that it was untimely.

On August 29, 1994 appellant, then a 35-year-old small parcel bundle sorter clerk, filed a claim for a right arm contusion sustained that day when she had her blood pressure checked during a fitness-for-duty examination. Appellant stated that Dr. Dabhade, a physician under contract to the employing establishment, and his nurse checked her "blood pressure repeatedly.... Doctor had cuff so tight my arm was bruised and sore."

An unsigned August 30, 1994 chart note from the employing establishment health clinic, states that appellant presented with "pressure marks on her right arm.... She relates to repetitive blood pressure attempts. Keying today for four hours causes pain light duty see tomorrow ... no use right arm four days" to September 2, 1994.

An August 30, 1994 employing establishment health clinic chart note, signed by a physician whose signature is illegible, states that appellant complained of right upper arm pain "from B/P [blood pressure] cuff being put on and left on when had FFD [fitness for duty] on August 29, 1994. Red lines noticed on right upper arm and lines on upper L[eft] arm. Cold pack applied to site."

In an August 31, 1994 note, Dr. Jorge Kurganoff, an attending internist, held appellant off work that day and released her to work as of September 1, 1994.<sup>1</sup>

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<sup>1</sup> In an October 4, 1994 letter, the Office advised appellant of the type of additional medical evidence needed to establish her claim, and enclosed a form report to be filled out by her attending physician.

By decision dated May 10, 1995, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office accepted that the incident regarding the blood pressure cuff occurred at the time and place and in the manner alleged, but found that appellant had not submitted sufficient medical evidence to establish that she sustained an injury as a result of that incident. The Office noted that appellant did not respond to the October 4, 1994 letter and form report requesting additional medical information.

In a June 3, 1995 letter, appellant requested a hearing before a representative of the Office's Branch of Hearings and Review. The envelope containing this letter was postmarked June 10, 1995.

By decision dated June 30, 1995, the Office's Branch of Hearings and Review denied appellant's request for a hearing on the grounds that it was untimely under section 8124 of the Act.<sup>2</sup> The Office found that the final merit decision of record was issued May 10, 1995, while appellant's letter requesting a hearing was not postmarked until June 10, 1995, more than 30 days following the May 10, 1995 decision. The Office found that the issue of fact of injury could be addressed equally well through submission of additional evidence and a proper request for reconsideration.

Regarding the first issue, the Board finds that the case is not in posture for decision.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident in the time, place and manner alleged.<sup>3</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup>

In this case, appellant submitted several medical reports mentioning the claimed August 29, 1994 right arm injury.

The August 30, 1994 health clinic chart note states that appellant presented with "pressure marks right arm" which appellant related to Dr. Dabhade's August 29, 1994 fitness-for-duty examination. Appellant was placed on light duty as keying caused right arm pain, with the restriction of "no use right arm" through September 2, 1994. This report is indicative of objective findings of a right arm injury, and that duty restrictions were prescribed due to those findings. A second August 30, 1994 health clinic chart note, signed by a physician, states that appellant complained of right upper arm pain from having her blood pressure taken during the August 29, 1994 fitness-for-duty examination, with objective findings of red lines on appellant's right and left upper arm. Dr. Kurganoff, an attending internist, held appellant off work on August 31, 1994, but did not specify a cause.

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<sup>2</sup> 5 U.S.C. § 8124.

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>4</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 110.5(a)(14).

While these reports are insufficient to discharge appellant's burden of establishing by the weight of reliable, substantial and probative evidence that the claimed right arm injury was causally related to factors of her federal employment, the Board finds that the history of the employment injury, a history of treatment and duty restrictions contained within the reports, constitutes sufficient evidence in support of appellant's claim to require further development of the record by the Office.<sup>5</sup>

On return of the case, the Office should conduct appropriate further development, including requesting clarification from the employing establishment as to the diagnosed condition, appellant's job requirements while on limited duty, details of the restrictions on the use of the right hand for four days, and whether such restrictions and limited duty were causally related to the August 29, 1994 fitness-for-duty examination by Dr. Dabhade. The Office should also determine the identities of the physicians and nurses who signed the chart notes and duty restrictions, and provide the appropriate persons with pertinent questions for further development. Following this and other development as the Office deems appropriate, the Office shall issue an appropriate decision in the case.

As the case must be returned to the Office for appropriate further development, the second issue regarding appellant's request for a hearing is moot.

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<sup>5</sup> See *John J. Carlone, supra* note 3. The Board notes that in this case the record contains no medical opinion contrary to appellant's claim, and further notes that the Office did not seek advice from an Office medical adviser or refer the case to an Office referral physician for a second opinion.

The decisions of the Office of Workers' Compensation Programs dated June 30 and May 10, 1995 are hereby set aside, and the case remanded to the Office for further development consistent with this decision and order.

Dated, Washington, D.C.  
February 6, 1998

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member