

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VIRGINIA M. DAVIS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Kansas City, Mo.

*Docket No. 96-1900; Submitted on the Record;
Issued July 2, 1998*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on April 13, 1994 as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim² including the fact that the individual is an "employee of the United States" within the meaning of the Act,³ that the claim was timely filed within the applicable time limitation period of the Act,⁴ 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.⁵

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition, for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. An employee may establish that an injury occurred in the performance

¹ 5 U.S.C. §§ 8101-8193.

² See *Daniel R. Hickman*, 34 ECAB 1220 (1983); 20 C.F.R. § 10.110.

³ *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

⁴ 5 U.S.C. § 8122.

⁵ See *Daniel R. Hickman*, *supra* note 2.

of duty as alleged, but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.⁶

To accept fact of injury in a traumatic injury case, the Office of Workers' Compensation Programs, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁷ The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.⁸

In the present case, a hearing representative of the Office in a June 19, 1995 decision, found that the April 13, 1994 incident, for which appellant filed a claim for compensation on April 18, 1994 occurred as alleged: appellant experienced low back pain while attempting to lift a heavy sack of mail during her unloading of a mail truck. The Board finds that this incident resulted in a personal injury within the meaning of the Act.

Appellant stopped work on the date of the alleged injury, April 13, 1994 and after two non-scheduled days of home self-treatment with no improvement, was examined by Dr. James E. Gracheck, an osteopath. In the notes of his April 16, 1994 examination of appellant, Dr. Gracheck noted a history that appellant had been lifting heavy boxes at work and that her back was bothering her. In a note dated April 16, 1994 Dr. Gracheck diagnosed a lumbosacral strain and restricted appellant to working 40 hours per week. In a report dated September 23, 1994 Dr. Gracheck noted that his examination of appellant on April 16, 1994 revealed "decreased range of motion of the dorsal and lumbosacral spine in all directions with bilateral perivertebral muscle spasms." In a report dated April 6, 1995 Dr. Gracheck stated: "As you are aware, this patient had a work-related injury, which occurred on about April 16, 1994, when during the course and scope of her employment she was lifting heavy boxes and felt pain in her back."

Although Dr. Gracheck indicated appellant's injury involved lifting boxes instead of sacks, this is a minor inconsistency that has little effect on the value of his report, given that appellant's job required lifting of both sacks and boxes. Dr. Gracheck's statement in his April 6, 1995 report that the injury occurred "on about April 16, 1994," the date he first examined appellant, supports rather than negates the occurrence of the alleged injury on April 13, 1994. The fact that Dr. Gracheck, in addition to attributing appellant's back condition to the incident "on about April 16, 1994," also attributes appellant's back condition to her heavy lifting at the employing establishment over a longer period of time, does not show that appellant did not sustain an injury to her low back on April 13, 1994, especially as appellant also attributes her

⁶ As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

⁷ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

back condition to both the April 13, 1994 incident and to other heavy lifting at the employing establishment.

The medical evidence is sufficient to establish an injury on April 13, 1994. Appellant attempted to treat her back condition for two days, then saw Dr. Gracheck, who reported a history of back pain during heavy lifting at work and whose examination revealed objective findings of muscle spasm. Dr. Gracheck diagnosed a lumbosacral strain, which he later indicated was related to an incident “on about April 16, 1994.” The Board finds Dr. Gracheck’s reports are sufficient to establish that appellant sustained a lumbosacral strain on April 13, 1994 as alleged. The case will be returned to the Office to determine the nature and extent of any disability related to the April 13, 1994 injury.

The decisions of the Office of Workers’ Compensation Programs dated April 17, 1996 and June 19, 1995 are reversed.

Dated, Washington, D.C.
July 2, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member