

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET H. LYNCH and U.S. POSTAL SERVICE,
POST OFFICE, Boston, Mass

*Docket No. 96-1273; Submitted on the Record;
Issued May 1, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained an injury to her neck in the performance of duty.

On March 23, 1995 appellant, a 44-year-old mail clerk, filed a Form CA-1 claim based on traumatic injury, alleging that on September 4, 1994 she was picking up a tray of bank mail when she began to experience pain on the right side of her neck. Appellant sought benefits for continuation of pay.

By letter dated April 12, 1995, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of her claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office further requested that appellant submit a detailed description of how her employment injury occurred. The Office stated that appellant had 30 days in which to submit the requested information.

In response to the Office's June 5, 1995 letter, appellant submitted an undated, handwritten letter describing how her alleged September 4, 1995 employment injury occurred, plus a work toleration evaluation form dated September 3, 1995, and various medical notes from March through May 1995. None of these documents, however, contained a description of her alleged September 4, 1995 employment injury, or a medical opinion indicating that her claimed condition was causally related to the employment injury.

By decision dated May 12, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained the claimed injury in the performance of duty. The Office found that while the evidence of record supported the fact that the claimed event, incident or exposure occurred at the time, place and in the manner alleged, the medical condition that appellant claimed had resulted from the alleged employment incident of September 4, 1994 was not supported by the medical evidence of record.

In a letter to the Office dated June 1, 1995, appellant requested a review of the Office's May 12, 1995 decision by an Office hearing representative. Accompanying the letter was a June 8, 1995 letter from a nurse, Ms. Brenda R. Curry-McKeon, which was countersigned by Dr. Charles G. Maker, Board-certified in internal medicine. Ms. Curry-McKeon stated that she had initially examined appellant on March 15, 1995, at which time she claimed to have experienced right neck pain on a daily basis since September. Ms. Curry-McKeon stated that appellant indicated the pain started while at work and had worsened over the past two to three weeks. Ms. Curry-McKeon diagnosed a cervical spine strain upon examination, placed appellant on limited work restriction, and provided progress notes dated March 27, April 13 and April 24, 1995.

By decision dated July 25, 1995, an Office hearing representative denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained the claimed injury in the performance of duty. The Office hearing representative stated that the sole evidence appellant submitted with regard to causal relationship was the June 8, 1995 report which did not constitute sufficient medical evidence to meet appellant's burden that she sustained an injury caused by her employment on September 4, 1994.

In a letter to the Office dated September 16, 1995, appellant requested reconsideration of the Office's July 25, 1995 decision. Accompanying appellant's letter was a September 4, 1995 letter from Ms. Curry-McKeon which was countersigned by Dr. Brian W. Blanchette, Board-certified in internal medicine. Ms. Curry-McKeon stated that, in her opinion, appellant did in fact sustain this type of injury in the performance of her duty, as she had described the incident to her. Ms. Curry-McKeon stated that the cervical spine strain and spasm could be related to the lifting of the tray as appellant had described. Ms. Curry-McKeon then noted that she had continued to treat appellant on numerous occasions since the initial consultation of March 15, 1995.

By decision dated December 18, 1995, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained the claimed injury in the performance of duty. The Office stated that the only evidence it had received was Ms. Curry-McKeon's September 4, 1995 letter, which the Office found was speculative and insufficient to establish that appellant had sustained an injury in the performance of duty on September 4, 1994.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury to her neck in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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 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 are causally related to the employment injury.² These are the

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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 at the time, place and in the manner alleged.⁴ 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.⁵ The medical evidence required to establish causal relationship is usually rationalized medical 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.⁶

In the present case, it is uncontested the appellant experienced the employment incident at the time, place and in the manner alleged. However, the question of whether an employment incident caused a personal injury generally can be established only by medical evidence,⁷ and appellant has not submitted rationalized, probative medical evidence to establish that the employment incident on September 4, 1994 caused a personal injury and resultant disability.

In the present case, the only evidence bearing on causal relationship are the March 15 and September 4, 1995 letters from Ms. Curry-McKeon. Countersigned by two physicians, neither of these letters contained a probative, rationalized medical opinion sufficient to establish that appellant sustained an injury or disability on September 4, 1994 causally related to employment factors.

An award of compensation may not be based on surmise, conjecture, or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant’s claim for compensation.

The March 15 and September 4, 1995 letters from Ms. Curry-McKeon do not constitute sufficient medical evidence demonstrating a causal connection between appellant’s September 4,

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

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “injury,” see 20 C.F.R. §10.5(a)(14).

⁶ *Id.*

⁷ See *John J. Carlone*, *supra* note 4.

1994 employment incident and the claimed injury to her neck. Causal relationship must be established by rationalized medical opinion evidence. The opinion of Ms. Curry-McKeon on causal relationship is of limited or no probative value in that they did not contain an adequate medical rationale from a physician.⁸ The reports did not contain medical evidence which described or explained the medical process through which the September 4, 1994 work accident would have been competent to cause the claimed injury. Thus, the Office's decisions are affirmed.

The decisions of the Office of Workers' Compensation Programs dated December 18, July 25 and May 12, 1995 are hereby affirmed.

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

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ *William C. Thomas*, 45 ECAB 591 (1994).