

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE FLOYD and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, Pa.

*Docket No. 96-1559; Submitted on the Record;
Issued May 11, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met her burden of proof in establishing that she sustained a right hand and arm injury on May 20, 1994 as alleged.

On July 12, 1995 appellant, then a 35-year-old postmaster, filed a claim for injuries to her right shoulder, arm and hand sustained on May 20, 1994 when she was "hit on passenger side of [her] car by employee who failed to stop at intersection leading into main thorofare [sic]." Appellant stated that the accident occurred in employing establishment parking lot number one. On the reverse of the form, it was indicated that appellant stopped work on May 27, 1994 and returned to work on February 1, 1995. It is noted that appellant first sought treatment on May 20, 1994 from an unnamed employing establishment physician.

In an October 23, 1995 letter, the Office of Workers' Compensation Programs advised appellant of the additional medical and factual evidence needed to establish her claim. The Office requested that appellant explain why she did not report the alleged May 20, 1994 injury within 30 days, the exact circumstances of the alleged accident, the names of any treating physicians, and dates of treatment. The Office enclosed an attending physician's form report (Form OWCP-20) for appellant to submit to her doctor for completion.

In an October 23, 1995 letter, the Office requested that the employing establishment submit all available information about the alleged May 20, 1994 accident and any related injury and treatment.

The record indicates that no additional evidence was received from appellant or the employing establishment prior to issuance of the November 27, 1995 decision.

By decision dated November 27, 1995, the Office denied appellant's claim on the grounds that she had submitted insufficient evidence to establish that she sustained an injury as alleged. The Office found that appellant submitted insufficient evidence to establish that the

alleged May 20, 1994 accident occurred at the time, place and in the manner alleged, or that she sustained any injury. The Office noted that appellant was advised by an October 23, 1995 letter of the type of additional medical and factual evidence needed to establish her claim, but that appellant failed to submit such evidence.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a right hand and arm injury on May 20, 1994 as alleged.

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.¹ 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.²

Although advised by the Office’s October 23, 1995 letter of the type of medical and factual evidence needed to establish her claim, appellant did not submit any evidence in support of her claim other than the claim form itself. She did not submit factual evidence substantiating the occurrence of the alleged May 20, 1994 accident, such as an employing establishment accident report, civilian police report, or automobile insurance claims. Also, she did not submit any medical reports describing a May 20, 1994 injury, treatment for such injury, or whether any periods of disability resulted from such injury. Although appellant noted on her July 12, 1995 claim form that she first obtained medical treatment on May 20, 1994 from an employing establishment dispensary physician, she did not submit the physician’s report.

Consequently, appellant had failed to meet her burden of proof, as she submitted insufficient evidence to establish either the occurrence of the alleged May 20, 1994 accident or that any injury resulted therefrom.

¹ *John J. Carlone*, 41 ECAB 354 (1989).

² *Id.* For a definition of the term “injury,” see 20 C.F.R. § 110.5(a)(14).

The decision of the Office of Workers' Compensation Programs dated November 27, 1995 is hereby affirmed.³

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

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

³ Accompanying her request for appeal, appellant submitted additional factual and medical evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued its final decision, in this case, November 27, 1995. 20 C.F.R. § 501(2)(c).