

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LORIE J. BAKER and U.S. POSTAL SERVICE,  
PROCESSING & DISTRIBUTION PLANT, Greensboro, N.C.

*Docket No. 97-703; Submitted on the Record;  
Issued November 9, 1998*

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DECISION and ORDER

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

The issue is whether appellant has established that she sustained an illness in the performance of duty causally related to factors of her federal employment.

The Board has duly reviewed the record in this case and finds that the evidence is insufficient to establish that appellant sustained an injury in the performance of duty.

On appeal, appellant takes issue with the finding made in the February 22, 1995 decision of the Office of Workers' Compensation Programs that, the evidence of record failed to establish that an injury as alleged was sustained. The Office's finding, however, is well supported by Board precedent.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim<sup>2</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>3</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>4</sup> 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.<sup>5</sup> These are

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<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

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

<sup>4</sup> 5 U.S.C. § 8122.

<sup>5</sup> *Id.*

essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

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.<sup>7</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>8</sup>

On November 23, 1994 appellant, then a 35-year-old letter sorter machine operator, filed a claim for compensation (Form CA-1) alleging that on November 17, 1994 she “smelled a strong odor,” and, as a result, got sick to her stomach, had shortness of breath and felt that she was going to pass out. In a November 17, 1994 request for authorization for an examination (Form CA-6), Dr. Norman Michael Mayer, Board-certified in emergency medicine, stated that appellant had microcytic anemia, but did not respond to questions concerning whether her condition was causally related to her employment. In a November 18, 1994 medical report, Dr. Steven R. Olson, Board-certified in radiology, stated that appellant’s November 18, 1994 x-rays revealed no evidence of acute infiltrates or effusions. In a November 21, 1994 duty status report, Dr. Samuel LaBower, appellant’s treating physician, stated that appellant was anemic, had trouble breathing and restricted her work activities. In a February 13, 1995 medical report, the Office medical adviser stated that he had reviewed the medical file and determined that the medical record contained no evidence that any factor of her employment caused, precipitated or aggravated a condition leading to her symptoms and disability.

In a medical report dated March 27, 1995, Dr. Woodhall Stopford, Board-certified in preventive medicine and internal medicine and Dr. I. Gordon Early, Board-certified in internal medicine, stated that respiratory complaints from appellant’s workplace concerned either MDI or phenyl isocyanate or a combination of the two. They noted that there was an increased risk to an allergic reaction when the substances are found in combination.<sup>9</sup>

In the instant case, appellant has not submitted medical evidence to establish that she incurred an employment-related injury. While she submitted medical reports indicating that she had anemia, none of the reports are sufficient to establish a causal connection between her injury and the accepted employment incident. The November 17, 1994 report, stated that appellant had microcytic anemia, but did not note whether appellant’s condition was causally related to factors of her employment. Similarly, the November 21, 1994 medical report from Dr. LaBower, appellant’s treating physician, is insufficient to establish appellant’s claim as he did not indicate

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<sup>6</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14)

<sup>9</sup> The Office reviewed this report together with many accident reports that appellant submitted pursuant to schedule award request for reconsideration. The Office denied appellant’s request on August 29, 1996 in a nonmerit decision, finding that the medical report and accident reports were irrelevant to the claim.

that the condition was causally related to her employment. Further, the report of Drs. Stafford and Early do not relate appellant's condition to any contaminants and this is of no probative value to her claim. As there are no medical reports of record that establish that appellant's condition was causally related to her employment, appellant has failed to meet her burden of proof as she has not submitted sufficient rationalized medical evidence establishing that her condition is due to the November 17, 1994 employment incident or other factors of her federal employment.

The decision of the Office of Workers' Compensation Programs dated February 2, 1995 is hereby affirmed.

Dated, Washington, D.C.  
November 9, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member