U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THERESA L. GUERRIERO and U.S. POSTAL SERVICE,
POST OFFICE, Edison, N.J.

Docket No. 97-291; Submitted on the Record;
Issued October 22, 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 an injury in the performance of duty.

The Board has duly reviewed the case on appeal and finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

Appellant filed a claim on August 17, 1995 alleging on August 16, 1995 she experienced pain in both hands while sorting mail. The Office of Workers' Compensation Programs denied her claim on October 10, 1995 finding that she failed to establish fact of injury.

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[1] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[2] 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

[1] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[3]

In this case, the Office accepted that the employment incident occurred as alleged. However, the Office found that appellant had not submitted sufficient medical evidence to establish that she sustained an injury as a result of the accepted incident.

In support of her claim, appellant submitted a note dated August 17, 1995 from Dr. C. Mendoza, a physician, diagnosing muscle spasm bilateral forearm and cervical musculature sprain. Dr. Mendoza released appellant to return to light duty. This note is not sufficient to meet appellant's burden of proof as Dr. Mendoza did not provide an opinion on the causal relationship between appellant's diagnosed condition and her accepted employment incident.

Appellant submitted work release notes dated August 17 and 18, 1995 indicating that appellant could return to light and regular duty respectively. These notes did not provide a diagnosis nor an opinion on the causal relationship between appellant's condition and her accepted employment incident.[4]

As appellant has not submitted the necessary medical evidence to establish a causal relationship between her diagnosed condition and accepted employment injury she has failed to meet her burden of proof and the Office properly denied her claim.

[3] *James Mack*, 43 ECAB 321 (1991).

[4] Appellant submitted a statement to the Office on September 18, 1995 asserting that she had incorrectly filed a claim for traumatic injury and that she was submitting a notice of occupational disease. Appellant submitted additional new evidence following the Office's October 10, 1995 decision. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated October 10, 1995 is hereby affirmed.

Dated, Washington, D.C.
October 22, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member