U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAMELA D. MORGAN and U.S. POSTAL SERVICE,
PORTAGE POST OFFICE, Portage, Ind.

Docket No. 97-2228; Submitted on the Record;
Issued April 8, 1999

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 shoulder injury on November 6, 1996 in the performance of duty as alleged.

On November 6, 1996 appellant, then a 49-year-old distribution clerk, filed a claim for an injury to her right shoulder, scapula, elbow and upper back sustained that day while casing and delivering mail. Appellant stopped work that day and returned to work November 8, 1996. In a supporting statement, appellant noted telling supervisors Rosemary Lee and Marlene Vanderlin on November 6, 1996 that her right shoulder was hurting. She also noted a history of December 1989 and January 1995 ulnar nerve surgeries for which she received compensation, an October 1995 elbow injury and a compensation claim for skin cancer.[1]

In support of her claim, appellant submitted a November 6, 1996 return to work slip from Dr. Donald M. Philips, an attending family practitioner, diagnosing "myositis -- trapezius (inflammation) and releasing appellant to work as of November 11, 1996. In a November 8, 1996 note, Dr. Philips stated that appellant was "totally incapacitated" from 7:15 a.m. to 11:30 a.m. that day, restricted her to working 8 hours per day for the next 6 weeks, and released her to work as of November 17, 1996. In a November 12, 1996 duty status report and attached note, Dr. Philips restricted appellant from lifting over 20 pounds, or reaching above shoulder level with the right arm.[2]

In a December 5, 1996 letter, the Office of Workers' Compensation Programs advised appellant of the additional medical and factual evidence needed to support her claim, including a

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[1] Any claims related to the ulnar nerve surgeries, elbow injury or skin cancer are not before the Board on the present appeal.

[2] In a November 12, 1996 letter, the employing establishment controverted appellant's claim on the grounds that the diagnosed myositis of the trapezius was occupational in nature and not traumatic.

medical report from Dr. Philips providing a history of injury, objective findings, diagnosis, opinion on causal relationship and whether appellant was disabled for any period. The Office noted that Dr. Philips' notes were deficient as they did not include a history of injury, findings on examination or opinion on causal relationship.

By decision dated December 26, 1996, the Office denied appellant's claim on the grounds that fact of injury was not established. The Office found that the medical evidence "failed to identify a mechanism of injury which caused the reported trapezius myositis condition." The Office further found that there was conflicting evidence of record as to whether the claimed injury occurred at the time, place and in the manner alleged.

In a December 20, 1996 report, received by the Office on December 26, 1996, Dr. Philips noted a history of a November 6, 1996 injury, relating appellant's account of pain between the shoulder blades while casing mail, developing into "intense pain in the right shoulder and right side of neck and decreased range of motion" while delivering mail. Dr. Philips noted findings on November 6, 1996 examination of tenderness of the right trapezius at the right scapular angle and right greater tuberosity, with a good range of right shoulder motion. He stated an impression of "myositis of trapezius and rhomboids and prescribed medication. Dr. Philips noted appellant's symptoms improved as of November 12, 1996 examination, but complained of right shoulder pain while "lying in a recliner," taking a deep breath or lying on her left side. On examination, Dr. Philips again found right shoulder tenderness and injected appellant at the right scapular angle. He diagnosed "supraspinatus myositis of the right scapular angle."

In a January 6, 1997 letter, appellant requested a review of the written record. She alleged that the Office had not considered Dr. Philips' December 20, 1996 report in its December 26, 1996 decision, even though it should have received the report on or before December 26, 1996. She enclosed an express mail receipt addressed to the Office, postmarked December 23, 1996, and an Office envelope postmarked December 26, 1996.[3]

By decision dated March 25, 1997 and finalized March 26, 1997, the Office hearing representative affirmed the Office's December 26, 1996 decision. The hearing representative reviewed the record, including Dr. Philips' December 20, 1996 narrative report. The hearing representative found that the medical record did not sufficiently explain any causal relationship between the diagnosed myositis and any specific factor of appellant's federal employment, or describe "the pathophysiological mechanism of injury."

The Board finds that appellant has not established that she sustained a right shoulder injury on November 6, 1996 in the performance of duty as alleged.

[3] In the case of *William A. Couch*, 41 ECAB 548 (1990), the Board held that when adjudicating a claim, the Office is obligated to consider all evidence properly submitted by a claimant and received by the Office before the final decision is issued. In this case, it appears that the Office received Dr. Philips' December 20, 1996 narrative report prior to issuance of the December 26, 1996 decision. However, the hearing representative's decision dated March 25, 1997 and finalized March 26, 1997 fully considered the entire record and discusses Dr. Philips' December 20, 1996 report in detail. Therefore, the *Couch* issue in this case was mooted by the hearing representative's decision dated March 25, 1997 and finalized March 26, 1997 and is therefore not dispositive on appeal.

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]

In this case, appellant has submitted sufficient evidence to establish that she experienced right shoulder and upper back pain on November 6, 1996 while in the performance of duty. However, appellant has not submitted sufficient medical evidence to establish that she sustained an injury on November 6, 1996 while in the performance of duty.

In support of her claim, appellant submitted reports from Dr. Philips, an attending family practitioner. Dr. Philips' November 6, 8 and 12, 1996 notes do not address causal relationship or mention specific factors of appellant's employment. In a December 20, 1996 report, Dr. Philips noted appellant's account of right shoulder pain while casing and delivering mail on November 6, 1996, and diagnosed "myositis of trapezius and rhomboids" and "supraspinatus myositis of the right scapular angle." However, Dr. Philips did not explain how or why casing or delivering mail would cause the diagnosed myositis. Without such opinion on causal relationship, Dr. Philips' opinion is of diminished probative value and insufficient to establish appellant's claim.[6]

Consequently, appellant has not established that she sustained an injury on November 6, 1996 in the performance of duty as alleged.

[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] *Lucrecia M. Nielsen,* 42 ECAB 583 (1991).

The decision of the Office of Workers' Compensation Programs dated March 25, 1997 and finalized March 26, 1997 is hereby affirmed.[7]

Dated, Washington, D.C.
April 8, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

[7] On appeal, appellant submitted new medical evidence. The Board may not consider evidence for the first time on appeal which was not before the Office at the time of issuance of the final decision in the case. 20 C.F.R § 501.(2)(c). Appellant also asserted, for the first time, that she was entitled to a schedule award for permanent impairment of the right upper extremity. There is no claim or decision of record regarding a schedule award for right upper extremity impairment. Therefore, the Board does not have jurisdiction over a schedule award claim in this case on appeal.