

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY L. LEACH and INTERNAL REVENUE SERVICE,
INTERNAL REVENUE SERVICE, Richmond, Va.

*Docket No. 98-108; Submitted on the Record;
Issued July 7, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On July 29, 1996 appellant, then a 34-year-old management assistant, filed a notice of traumatic injury and claim for compensation alleging that on July 22, 1996, following a breakfast break, she was on her way back from the cafeteria to the elevators when she slipped and fell on a wet floor, thereby injuring her back, right arm and neck. Appellant was off work from July 22 through August 12, 1996.

In support of her claim, appellant submitted an August 1, 1996 work release form from the York/Belvedere Medical Center which indicated that appellant had been receiving treatment since July 23, 1996 for "medical reasons" and that she was able to return to work on August 5, 1996.

By letters dated August 26 and October 8, 1996, the Office of Workers' Compensation Programs advised appellant to submit additional factual and medical evidence to support her claim.

In a decision dated November 8, 1996, the Office denied compensation on the grounds that the factual and medical evidence was insufficient to establish fact of injury.

By letter dated November 12, 1996, appellant requested a review of the written record and further described the July 22, 1996 employment incident.

Appellant submitted a progress note dated July 8, 1996 indicating that she was treated on that date for left neck and shoulder pain related to a motor vehicle accident which occurred on July 4, 1996.

In a decision dated March 21, 1997, an Office hearing representative noted that the case record contained no evidence that would challenge the accuracy of appellant's description of the July 22, 1996 employment incident but found the record to be devoid of medical evidence which causally related appellant's medical condition to the July 22, 1996 employment incident. Thus, the Office's November 8, 1996 decision was affirmed.

By letter dated June 10, 1997, appellant requested another review of the written record and submitted additional evidence.

In a July 17, 1997 letter, the Office denied appellant's request for a review of the written record, noting that the issue in the case could be equally well addressed through the reconsideration process.

The Board finds that appellant failed to carry her burden of establishing that she sustained an injury in the performance of duty.¹

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing 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 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁶ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.

¹ Appellant submitted new evidence on appeal. The Board, however, may only consider evidence that was in the case record that was before the Office at the time the Office rendered its decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from seeking to have the Office consider such evidence pursuant to a reconsideration request filed with the Office.

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *Id.*

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁷ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁸

In the instant case, the Office properly determined that appellant provided no rationalized medical opinion evidence supporting any causal relationship between his diagnosed condition and the July 22, 1996 employment incident. As noted by the Office hearing representative, the only relevant medical evidence submitted by appellant consisted of an August 1, 1996 work release form which neither provided a history of injury nor reported any condition causally related to the July 22, 1996 employment incident.⁹ Although appellant was informed of the type of medical evidence required to support her claim, the evidence before the Office hearing representative was insufficient to discharge appellant's burden of proof. The Office, therefore, properly denied the claim.

The decisions of the Office of Workers' Compensation Programs dated March 21, 1997 and November 8, 1996 are affirmed.

Dated, Washington, D.C.
July 7, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ See *Woodhams*, *supra* note 4.

⁸ *Id.*

⁹ The July 8, 1996 progress note is not relevant to the issue of causal relationship as it pertains to treatment appellant received as a result of a July 4, 1996 motor vehicle accident and not the alleged July 22, 1996 employment injury.