

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of DONNA C. JENNINGS and U.S. POSTAL SERVICE,  
POST OFFICE, Eureka, Calif.

*Docket No. 97-2626; Submitted on the Record;  
Issued June 8, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant met her burden to establish that she sustained a right shoulder injury in the performance of duty on March 26, 1997.

On March 27, 1997 appellant, then a 54-year-old rural letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that she sprained her right shoulder on March 26, 1997 when she reached up to grab magazines while casing mail. Appellant indicated that her shoulder was inflamed from overuse and that after this reaching incident she felt a sharp stabbing pain in her arm.

In support of her claim, appellant submitted a March 27, 1997 report from a physical therapist which indicated that appellant "required two weeks off work to heal a shoulder injury." The health care provider diagnosed a right shoulder strain and indicated that Dr. Richard Buscho, a Board-certified internist, was appellant's physician.

By letter dated April 24, 1997, the Office of Workers' Compensation Programs requested additional information including a physician's opinion supported by medical rationale addressing the causal relationship between appellant's disability and the injury reported. Appellant was given 21 days to submit such evidence, but failed to do so.

By decision dated May 28, 1997, the Office rejected appellant's claim for compensation because fact of injury was not established. The Office determined that appellant failed to establish that the medical condition existed for which compensation was claimed.<sup>1</sup>

---

<sup>1</sup> The Board notes that appellant submitted additional evidence subsequent to the Office's May 28, 1997 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).

The Board finds that appellant has not met her burden of proof in establishing that she sustained a right shoulder injury in the performance of duty on March 26, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim<sup>3</sup> including the fact that the individual is an "employee of the United States" within the meaning of the Act,<sup>4</sup> that the claim was timely filed within the applicable time limitation period of the Act,<sup>5</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>6</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>7</sup>

To determine whether an 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>8</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>9</sup> An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.<sup>10</sup>

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.<sup>11</sup> The

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> See *Daniel R. Hickman*, 34 ECAB 1220 (1983); see also 20 C.F.R. § 10.110.

<sup>4</sup> See *James A. Lynch*, 32 ECAB 216 (1980); see also 5 U.S.C. § 8101(1).

<sup>5</sup> 5 U.S.C. § 8122.

<sup>6</sup> See *Melinda C. Epperly*, 45 ECAB 196 (1993).

<sup>7</sup> See *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> See *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>10</sup> As used in the Act, the term "disability" means incapacity because of an injury in employment to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; see *Frazier V. Nichol*, 37 ECAB 528 (1986).

<sup>11</sup> See *Elaine Pendleton*, 40 ECAB 1143 (1989).

question of whether an employment incident caused a personal injury generally can be established only by medical evidence.<sup>12</sup>

In the instant case, appellant has not submitted sufficient medical evidence to establish that she incurred an employment-related injury. The only evidence appellant submitted was a March 27, 1997 report from her physical therapist who diagnosed a right shoulder strain and indicated that appellant required two weeks off to heal the injury. The Board has held, however, that a medical opinion, in general, can only be given by a qualified physician.<sup>13</sup> Because physical therapists are not physicians under the Act,<sup>14</sup> their opinions are of no probative value. Consequently, appellant failed to submit any probative evidence to establish that she incurred an employment-related injury even though such evidence was requested by the Office.<sup>15</sup>

The decision of the Office of Workers' Compensation Programs dated May 28, 1997 is affirmed.

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

George E. Rivers  
Member

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

---

<sup>12</sup> See *Victor J. Woodhams*, supra note 7.

<sup>13</sup> See *George E. Williams*, 44 ECAB 530 (1993).

<sup>14</sup> 5 U.S.C. § 8101(2).

<sup>15</sup> Even if the March 27, 1997 report of the physical therapist could be attributed to Dr. Buscho, a Board-certified internist, the report would be insufficient to meet appellant's burden because it failed to address whether appellant's condition was employment related.