

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of KATHRYN L. MAULLER and U.S. POSTAL SERVICE,  
POST OFFICE, St. Louis, Mo.

*Docket No. 97-2004; Submitted on the Record;  
Issued March 22, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

The Office of Workers' Compensation Programs accepted appellant's claim for a shoulder strain.<sup>1</sup> On May 31, 1996 appellant filed a claim for a recurrence of disability, alleging that, on May 25, 1996, she sustained a recurrence of the October 22, 1992 employment injury.

Appellant stated that her upper left arm had always been in pain since she was originally hurt but in the last couple of weeks, the pain had gotten increasingly worse. She also stated that she had a slight seizure or a grand mal seizure at the employing establishment, where she fell with convulsion and reinjured her left shoulder. A progress note dated June 27, 1996 by a physical therapist stated that appellant experienced a seizure at work on June 25, 1996. The first page of a report dated June 6, 1996 from Dr. Allen Adams, a Board-certified orthopedic surgeon, stated that appellant had injured her shoulder two years ago at work and was on restricted duty. He stated that she started having increased pain on May 17, 1996 without specific reason. In a disability note dated May 30, 1996, Dr. Adams stated that appellant could not work from May 25 to May 31, 1996. In a memorandum to the file dated January 6, 1997, the Office stated that appellant's notice of a recurrence should have been classified as a traumatic injury because appellant indicated that she had a seizure at the employing establishment and fell with convulsion, reinjuring her left shoulder.

By letter dated January 24, 1997, the Office requested additional information from appellant including a medical report from the physician who examined her for her injury.

By decision dated April 17, 1997, the Office denied the claim, stating that the evidence did not establish that she sustained an injury on May 25, 1996, as alleged.

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<sup>1</sup> Appellant sustained injury on October 22, 1992 while tossing mail sacks.

The Board finds that appellant has not established that she sustained an injury in the performance of duty, as alleged.

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>2</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>3</sup>

It is a general rule of workers’ compensation law that an injury occurring on the industrial premises during working hours is compensable unless the injury is established to be within an exception to the general rule.<sup>4</sup> One exception applies to falls in the workplace: when a personal, nonoccupational pathology causes an employee to collapse and to suffer injury upon striking the immediate supporting surface, and there is no intervention or contribution by any hazard or special condition of the employment, the injury is not a personal injury while in the performance of duty as it does not arise out of a risk connected with the employment.<sup>5</sup> But when the fall is unexplained, and therefore attributable neither to the employment nor to the claimant personally, the risk is neutral, and an injury arising in the course of employment from a neutral risk is compensable.<sup>6</sup>

In the present case, appellant indicated in her claim for a recurrence of disability dated May 31, 1996 that she had a grand mal seizure causing her to fall and reinjure her left shoulder. Thus, the proper claim is for a traumatic injury, and not a recurrence, which is defined as a spontaneous, material change in an employee’s condition.<sup>7</sup> The only reference to appellant’s fall is in the June 27, 1996 physical therapy report which noted appellant’s explanation that she experienced a seizure at work on June 25, 1996, a date which is inconsistent with appellant’s date of injury. The first page of Dr. Adams’ June 6, 1996 report stated that appellant began having increased pain on May 17, 1996 without specific reason. Appellant did not submit any evidence in response to the Office’s January 24, 1997 letter requesting additional information.

Appellant attributed her fall to a grand mal seizure. As such, this is an idiopathic pathology and therefore not compensable, especially where, as here, appellant did not establish that there was any intervention or contribution by a hazard or special condition of the employment. The June 27, 1996 physical therapy note merely corroborates that appellant sustained a seizure but it contains no medical rationale on causation and, in any event, a physical

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<sup>2</sup> *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>3</sup> *Id.*

<sup>4</sup> *Margreate Lublin*, 44 ECAB 945, 947 (1993); *Martha G. List*, 26 ECAB 200, 104 (1974).

<sup>5</sup> *Margreate Lublin*, *supra* note 4 at 957; *Edward V. Juare*, 41 ECAB 126, 129-30 (1989).

<sup>6</sup> *Supra* note 4.

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- *Recurrences*, Chapter 2.1500.3(b)(1)(a) (June 1998).

therapist's opinion is not probative under the Act.<sup>8</sup> Dr. Adams' June 6, 1996 report is not probative because he does not address appellant's grand mal seizure. Although the Office provided appellant with the opportunity, appellant did not present sufficient evidence to establish that she sustained a work-related injury on May 25, 1996. Appellant has therefore not met her burden of proof to establish her claim.

The decision of the Office of Workers' Compensation Programs dated April 17, 1997 is hereby affirmed.

Dated, Washington, D.C.  
March 22, 1999

George E. Rivers  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>8</sup> See *Jerre R. Rinehart*, 45 ECAB 518, 520 (1994).