

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD A. DALY and U.S. POSTAL SERVICE,  
POST OFFICE, Cuyahoga Falls, OH

*Docket No. 98-514; Submitted on the Record;  
Issued September 2, 1999*

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DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on September 3, 1997.

On September 4, 1997 appellant, then a 44-year-old letter carrier, filed a Form CA-1 claim for benefits based on traumatic injury. Appellant alleged that on September 3, 1997 he was assaulted by a truck driver blocking a mailbox, resulting in injuries to his right eye and neck.

In a letter to appellant dated September 19, 1997, the Office of Workers' Compensation Programs requested that appellant submit additional information in support of his claim, including a medical report and opinion from a physician, supported by medical reasons, as to how the reported work incident caused or aggravated the claimed injury. The Office also requested that appellant provide a diagnosis and clinical course of treatment for the injury. The Office informed the employee that he had 30 days to submit the requested information. Appellant did not respond to this request within 30 days.

By decision dated October 22, 1997, the Office found that appellant failed to submit sufficient evidence to support his claim that he sustained an injury in the performance of duty on September 3, 1997.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on September 3, 1997.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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 period of the Act, that an injury was

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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>4</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>5</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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 supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>6</sup>

In the instant case, there is no dispute that appellant was an “employee” within the meaning of the Act, or that appellant timely filed his claim for compensation. Nevertheless, appellant failed to submit any evidence establishing he actually experienced the employment incident at the time, place and in the manner alleged. Nor did he submit a rationalized, probative medical opinion from a physician to establish that the employment incident caused a personal injury. The Office advised appellant of the deficiency in the evidence, both factual and medical, but appellant failed to respond to the Office’s request for additional information. Appellant, therefore, failed to meet his burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship. Causal relationship must be established by rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied appellant’s claim for compensation.

As there is no factual or medical evidence addressing and explaining why his claimed injury was caused by the September 3, 1997 employment incident, appellant has not met his

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<sup>2</sup> *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

<sup>6</sup> *Id.*

burden of proof in establishing that he sustained an injury in the performance of duty. Thus, the Office's decision is affirmed.

The decision of the Office of Workers' Compensation Programs dated October 22, 1997 is hereby affirmed.

Dated, Washington, D.C.  
September 2, 1999

Michael J. Walsh  
Chairman

George E. Rivers  
Member

A. Peter Kanjorski  
Alternate Member