

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA A. SICARD and U.S. POSTAL SERVICE,
POST OFFICE, Easthampton, MA

*Docket No. 99-1708; Submitted on the Record;
Issued August 1, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant established that she sustained an injury in the performance of duty.

On September 22, 1998 appellant, a 39-year-old letter carrier, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained tendinitis of the right shoulder while in the performance of duty. She explained that her condition was due to the continuous, repetitive motions required of her position as a letter carrier. Appellant further explained that she first became aware of her condition on August 28, 1998 and identified September 3, 1998 as the date she realized her condition was caused or aggravated by her employment. She ceased work on September 3, 1998 and returned to work on September 9, 1998. Although appellant indicated that she received medical treatment for her condition on September 3, 1998, she did not submit any supporting medical evidence with her claim.

By letter dated January 11, 1999, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical information within 30 days. The Office did not receive the requested information within the allotted time frame.

In a decision dated March 11, 1999, the Office denied appellant's claim on the basis that she failed to establish that she sustained an injury as alleged. The Office explained that, while the evidence of file established that appellant actually experienced the claimed event, incident or exposure at the time, place and in the manner alleged, there was no medical evidence establishing that appellant suffered a diagnosed medical condition causally related to her accepted employment exposure.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury in the performance of duty.

In an occupational disease claim, in order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a

factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by appellant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹

In the instant case, while the Office accepted that appellant actually experienced the claimed event, incident or exposure at the time, place and in the manner alleged, the Office properly denied appellant's claim based on her failure to submit medical evidence establishing the presence or existence of a medical condition resulting from the accepted employment exposure. As previously noted, appellant did not initially submit any medical evidence in support of her claim for right shoulder tendinitis. Furthermore, she did not respond in a timely fashion to the Office's January 11, 1999 request for information.² In view of the absence of any medical evidence diagnosing a condition causally related to factors of appellant's federal employment, appellant has failed to establish that she sustained an injury in the performance of duty.

The March 11, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.
August 1, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

¹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

² The record on appeal includes evidence that was not submitted to the Office prior to the issuance of its March 11, 1999 decision denying compensation. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its final decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).

HECK LIST FOR LEGAL STAFF

Check/Answer all that apply

- Does Board have jurisdiction over the appeal? yes**
- If appellant is represented on appeal, is the attorney/representative's authorization present? n/a**
- Is there an outstanding oral argument request? no**
- What are the issues on appeal? List them. (E.g., Termination; Fact of Injury, Emotional Conditions.) fact of injury**
- Are the issues addressed in the text of your decision included in the issue statement? yes**
- Does the Board have jurisdiction over all the issues addressed? yes**
- What are the dates of the pertinent reconsideration requests and Office decisions ? List them. 3/11/99**
- Have all decisions over which the Board has jurisdiction been disposed of? I.e., by affirmance, remand, reversal, etc. yes**
- Has the draft been proofed for typos, grammatical errors and proper citation form? yes**
- Was the Office hearing rep's decision adoptable? If so, is a memorandum explaining why adoption was preferred attached? n/a**
- Is the hearing rep's decision attached with references to case record? n/a**

Dated, Washington, D.C.
August 1, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member