

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA A. ROBERTS and U.S. POSTAL SERVICE,
POST OFFICE, Providence, RI

*Docket No. 99-1778; Submitted on the Record;
Issued August 22, 2000*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

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

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

To establish that an injury was sustained in the performance of duty, appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence establishing that the employment factors identified by the claimant 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 claimant. The medical evidence required to establish causal relationship, generally, is 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 appellant'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 appellant.¹

On September 10, 1998 appellant, then a 46-year-old letter carrier, filed an occupational claim, Form CA-2, alleging that she felt left knee pain when she walked up and down stairs "all day long." Her job description included delivery and collection of the mail on foot or by vehicle

¹ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

under varying conditions on various routes. It could include carrying mail in satchels weighing as much as 35 pounds and unloading sacks of mail weighing up to 70 pounds.

By letter dated October 2, 1998, the Office of Workers' Compensation Programs informed appellant that more evidence was necessary to establish her claim, including a report from her physician explaining how her employment contributed to her condition.

By letter dated August 6, 1998, an employing establishment employee described appellant's work duties stating that she performed casing and pulling, withdrawing mail from the clerk cases and that most of her time was spent standing although she had the option to sit to case the mail. He stated that appellant's street time was six hours, that appellant drove her own vehicle and delivered mail "in a park and loop manner."

In a disability note dated October 21, 1998, appellant's treating physician, Dr. Jerald I. Kupperberg, a Board-certified pediatrician, stated that appellant could work eight hours performing light duty but no walking and no lifting more than 15 pounds.

Appellant submitted physical therapy notes dated July 13 and 20, 1998 describing pain in her left foot, left knee and left elbow and forearm. The July 20, 1998 report referred to a traumatic incident appellant sustained to her left ankle on August 15, 1992.

In a statement dated October 29, 1998, appellant reiterated that she felt the pain in her knee when she walked up and down stairs on her job and the pain eased when she did less stair climbing.

By decision dated November 5, 1998, the Office denied the claim, stating that appellant did not establish that she sustained an injury as alleged.

By letter dated November 12, 1998, appellant requested reconsideration of the Office's decision and submitted additional medical reports from Dr. Kupperberg dated October 16 and December 5, 1998, and one undated, which was received by the Office on November 19, 1998. The October and December 1998 reports addressed appellant's physical limitations and the report received on November 19, 1998 addressed causation. In the report received on November 19, 1998 report, Dr. Kupperberg stated that appellant had fractured her left foot, which healed gradually "since the original injury," which he "believe[d] was in 1992 taking a misstep delivering mail." He stated that, because of the recurrent pain in her foot, appellant had been guarding her left side and this caused a ligamentous strain in the left knee.

By decision dated February 11, 1999, the Office denied appellant's request for modification.

In the present case, Dr. Kupperberg's report received on November 19, 1998, which is the only report in the record, which addressed causation, stated that appellant's left knee pain resulted from recurrent pain in her foot from a 1992 employment injury in which she fractured her left foot and that appellant had been guarding her left side due to her foot pain, which caused a ligamentous strain in the left knee. His account of her injury is inconsistent with her version of the injury as appellant did not mention that she had a previous employment injury and indicated

that the pain was due to walking up and down stairs. Because of the discrepancy in the history of her injury and absence of medical evidence establishing that the walking up and down stairs caused her injury, appellant has submitted insufficient medical evidence to establish her claim.² The physical therapy reports dated July 3 and 20, 1998 are not probative as physical therapists do not constitute physicians under the Federal Employees' Compensation Act.³ Although the Office advised appellant of the evidence that it was necessary to submit to establish her claim, appellant did not submit the requisite evidence.⁴ Appellant has, therefore, failed to establish her claim.

The decisions of the Office of Workers' Compensation Programs dated November 5 and February 11, 1998 are hereby affirmed.

Dated, Washington, D.C.
August 22, 2000

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

² See *Patricia M. Mitchell*, 48 ECAB 371, 372-73 (1997).

³ See *Jerre R. Rinehart*, 45 ECAB 518, 520 (1994).

⁴ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision; see *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell* 5 ECAB 35 (1952); 20 C.F.R. § 501.2(c)(1).