

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BERNICE SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 98-2182; Oral Argument Held December 8, 1999;
Issued February 15, 2000*

Appearances: *Richard M. Bockol, Esq.*, for appellant; *Sheldon G. Turley, Jr., Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant met her burden of proof to establish that she sustained a back injury in the performance of duty on October 21, 1996.

The Board finds that appellant established the occurrence of an employment incident on October 21, 1996 but that the case is not in posture for decision regarding whether she sustained a back injury as a result of this incident.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim.² The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.³ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237-38 (1989).

³ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

On February 27, 1997 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim⁵ alleging that she sustained pain in her low back, which went down her right leg, while carrying a heavy mailbag on October 21, 1996.⁶ By decision dated May 19, 1997, the Office denied appellant's traumatic injury claim. The Office determined that appellant had established the occurrence of the October 21, 1996 employment incident as alleged but that she had not submitted sufficient medical evidence to establish that she sustained an employment injury due to the accepted employment incident. By decision dated and finalized April 9, 1998, an Office hearing representative affirmed the Office's May 19, 1997 decision, as modified to reflect his determination that appellant had not established the fact of injury on October 21, 1996. The Office hearing representative indicated that appellant's description of the claimed October 21, 1996 employment incident was vague and unclear.

The Board finds that appellant established the occurrence of an employment incident on October 21, 1996. Although the Office, in its April 9, 1998 decision, had indicated that appellant's description of the October 21, 1996 incident was vague and unclear, the Board notes that appellant's description of the incident was sufficiently specific and clear to show the occurrence of an employment incident on that date. Appellant indicated that on October 21, 1996 she carried a heavy bag of mail, which weighed at least 35 pounds, as well as additional mail in her arms. Appellant also noted that she engaged in delivering mail on that date. The record does not contain any evidence refuting appellant's account of the October 21, 1996 employment incident.⁷

The Board further finds that, while the opinion of Dr. Robert F. Mowery, appellant's attending Board-certified family practitioner, is not completely rationalized, it indicates that appellant sustained an employment-related injury on October 21, 1996 due to the accepted employment incident and is not contradicted by any substantial medical or factual evidence of record. In a report dated May 29, 1997, Dr. Mowery detailed appellant's factual and medical history, including the circumstances of her September 18, 1995 employment injury and indicated that she sustained a new injury on October 21, 1996 due to her employment activities on that date. The record contains other reports, dated between February and May 1997, in which he noted that appellant sustained a back strain with sciatica on October 21, 1996. While the opinion of Dr. Mowery is not sufficient to meet appellant's burden of proof to establish her claim, it raises an uncontroverted inference between her claimed condition and the employment incident

⁵ The claim was assigned No. A3-225286.

⁶ On September 18, 1995 appellant, sustained an employment-related acute lumbosacral strain with right sciatica. Appellant stopped work on that date and eventually returned to regular duty in May 1996. In connection with this case file (No. A3-211512), appellant filed a claim alleging that she sustained a recurrence of disability on October 21, 1996 due to her September 18, 1995 employment injury. By decision dated February 12, 1997, the Office denied appellant's recurrence claim on the grounds that she did submit sufficient medical evidence in support thereof. The Office suggested that the medical evidence showed that appellant sustained a traumatic injury on October 21, 1996 and recommended that she file a traumatic injury claim form.

⁷ An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

of October 21, 1996 and is sufficient to require the Office to further develop the medical evidence and the case record.

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related injury on October 21, 1996. The Office should prepare a new statement of accepted facts and obtain a medical opinion on this matter from an appropriate medical specialist.⁸ After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated and finalized April 9, 1998 is set aside and the case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
February 15, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁸ The medical specialist should be provided with the case files pertaining to both the September 18, 1995 employment injury and the claimed October 21, 1996 employment injury.