

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN MOREAU and U.S. POSTAL SERVICE,
POST OFFICE, Baton Rouge, LA

*Docket No. 99-774; Submitted on the Record;
Issued July 25, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established disability commencing August 31, 1996 causally related to her employment injury.

In the present case, the Office of Workers' Compensation Programs accepted that appellant sustained a left shoulder impingement syndrome causally related to factors of her federal employment. On June 24, 1997 appellant filed a claim for compensation (Form CA-7) commencing August 31, 1996. By decision dated October 14, 1997, the Office determined that appellant had not established any disability due to the accepted employment injury. In a decision dated September 17, 1998, the Office denied modification of the prior decision.

The Board has reviewed the record and finds that the Office properly denied compensation for wage loss in this case.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.²

In the present case, appellant submitted a report dated November 23, 1997, from Dr. Thomas M. John, a family practitioner, stating that appellant had two separate medical conditions: a left shoulder impingement and clinical depression. Dr. John opined that appellant

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

became disabled because of each of these conditions.³ The Board finds that although the record is not sufficient to establish appellant's claim for disability, the Office properly determined that it was sufficient to require further development of the medical evidence.⁴ In this case, the Office scheduled a second opinion examination with an appropriate physician for a report that included an opinion as to whether appellant was disabled from August 31, 1996 due to her employment injury.

Ordinarily the case would not be in posture for decision until the Office received a probative medical report on the issues presented from the second opinion physician. In this case, however, the record indicates that appellant failed to appear for the scheduled examination on September 1, 1998. In a letter dated September 2, 1998, the Office notified appellant that it proposed to suspend compensation under 5 U.S.C. § 8123, unless she submitted reasons for failing to appear within 14 days.⁵ Since the record indicates that appellant failed to appear for the scheduled examination, the Board will not remand the case.⁶ When appellant participates in the continuing development of the medical evidence, the Office will further develop the medical evidence on the relevant issues. The current evidence of record is not, however, sufficient to establish an employment-related disability.

³ The Board notes that Dr. John had previously submitted duty status reports (Form CA-17) indicating that appellant was totally disabled from August 31, 1996 and providing diagnoses of left shoulder impingement syndrome and severe anxiety. It is also noted that appellant filed a separate claim for an employment-related emotional condition, which was denied by the Office. That issue is not before the Board on this appeal.

⁴ See, e.g., *Richard E. Konnen*, 47 ECAB 388 (1996).

⁵ The September 17, 1998 Office decision does not, however, represent a suspension under section 8123, but a denial of modification of the October 14, 1997 decision.

⁶ See *Guiseppa Aversa*, 46 ECAB 974 (1995) (appellant obstructed a scheduled examination with an impartial medical examiner; the Board stated that it would not remand the case, but the Office should proceed to develop the record when the obstruction ceased).

The decision of the Office of Workers' Compensation Programs dated September 17, 1998 is affirmed.

Dated, Washington, D.C.
July 25, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member