

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY E. BALDERSTON and U.S. POSTAL SERVICE,
POST OFFICE, Great Bend, KS

*Docket No. 98-1396; Submitted on the Record;
Issued March 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury while in the performance of her duties on May 1, 1996.

On May 17, 1996 appellant, a distribution clerk, filed a claim asserting that she sustained an injury while in the performance of duty on May 1, 1996 when she was taking the flats around to letter carriers. She stated that she was pulling down the top row, that they came down fast because they were heavy and that they landed on her rib area. A witness confirmed the incident and stated that appellant complained of tingling in her fingers and about how hard it had landed on her rib cage. Appellant continued working through May 4, 1996 although it was painful to do her regular duties. She took annual leave from May 6 through May 19, 1996. Appellant stated that during the week of May 6, 1996 the pain in her rib and back area continued to increase. She rested, but when the pain continued to intensify she sought medical attention on May 9, 1996. Appellant stopped work on May 20, 1996.

On May 31, 1996 the Office of Workers' Compensation Programs advised appellant to submit additional evidence in support of her claim, including a physician's narrative report including a detailed history of injury or work factors, a diagnosis and a reasoned medical opinion discussing in detail the relationship of the medical condition to the alleged work incident implicated by appellant.

On June 14, 1996 appellant's chiropractor reported that he saw appellant on May 9, 1996 complaining of left upper back pain radiating around to the chest. A chest x-ray showed significant congestion and confirmation of bronchitis. He referred appellant to her attending physician for treatment.

In a decision dated July 1, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained an injury on May 1, 1996, as alleged. The Office found that the initial evidence of file supported the fact that appellant actually

experienced the claimed accident, event or employment factor at the time, place and in the manner alleged; however, the medical evidence failed to support a medical condition diagnosed in connection with the accepted accident, event or employment factor. The Office found that appellant's chiropractor was not considered a physician because the medical evidence did not establish the presence of a subluxation demonstrated by x-ray.

Appellant requested reconsideration and submitted an August 14, 1996 report from Dr. Richard D. Dexter, a Board-certified family physician. He reported that appellant had injured her serratus anterior muscle at work while lifting a box of magazines and journal subscriptions off of a top shelf. The box pulled on her shoulder at that time and fell and struck her in the chest. As a result, Dr. Dexter reported, appellant continued to have problems due to this injury. He described her medical course. On July 17, 1996 it was found that appellant had a lot of pain and tightness around the anterior serratus and rhomboids as well as scapular immobilization. The mechanism of injury to the shoulder and scapular region, Dr. Dexter reported, was consistent with an overhead stress load "and I suspect that she had a fairly significant strain in the shoulder that was missed by the chiropractor." He added:

"In regards to the question of is it possible for her to sustain an injury, I can clearly state that the injury was sustained and it was misdiagnosed by [the chiropractor] as a subluxation. I have enclosed reports with this letter from [the physical therapist] and a graphic drawing of the serratus anterior muscle to show its position and how lifting up overhead could have damaged that muscle and tendon. It also describes how inspiration can attribute [sic] to some pain if that muscle is damaged. All of these findings are consistent with [appellant's] history and although it did not come out quickly and as timely as it should have, I feel it is consistent."

In a decision dated November 15, 1996, the Office reviewed the merits of appellant's claim and found that the evidence submitted in support of appellant's request was insufficient to warrant modification of its prior decision. The Office found that although Dr. Dexter offered a supporting medical opinion, a definitive diagnosis based on clinical findings was not provided.

On October 27, 1997 appellant requested reconsideration and submitted in support thereof numerous treatment notes and other medical documentation. She submitted an itemization of the medical services she received since seeing Dr. Dexter. Records from his office showed an initial diagnosis of thoracic dysfunction and then a more specific diagnosis of "sprain, shoulder/arm, not otherwise specified." Appellant submitted subsequent return-to-work forms showing a strain injury to the left serratus anterior muscle, consistent with Dr. Dexter's opinion of August 14, 1996.

In a decision dated February 6, 1998, the Office denied a merit review of appellant's claim on the grounds that appellant's request for reconsideration failed to include any relevant material. The Office noted that Dr. Dexter's supporting opinion of August 14, 1996 related appellant's condition to an overhead stress load but that a review of the incident described by appellant found no reference to overhead lifting. "In fact," the Office noted, "the claimant by her

own statement was not lifting but pulling at the time of the injury.”¹ The Office found that appellant failed to provide sufficient reasoned medical opinion evidence that provided a firm diagnosis and supported a medical connection between the event described on appellant’s claim form and the diagnosis.

With respect to the Office’s February 6, 1998 decision, the Board finds that the Office conducted a merit review of appellant’s claim. Although the Office denied appellant’s October 27, 1997 request for reconsideration in the form of a nonmerit decision, it found that appellant failed to provide sufficient reasoned medical opinion evidence supporting a medical connection between a firm diagnosis and the event described on appellant’s claim form. In making this finding, the Office based its decision at least in part on the probative value or evidentiary sufficiency of the medical evidence, including Dr. Dexter’s opinion of August 14, 1996. This constituted a merit review of appellant’s claim. Accordingly, the issue on appeal is whether appellant sustained an injury while in the performance of her duties on May 1, 1996.

The Board finds that appellant has met her burden of proof to establish that she sustained an injury while in the performance of her duties on May 1, 1996.

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.³

The Office has accepted that the initial evidence of file supported the fact that appellant actually experienced the claimed accident, event or employment factor at the time, place and in the manner alleged. The question for determination is whether this incident caused an injury.

Causal relationship is a medical issue⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established

¹ The Board notes that Dr. Dexter’s account of lifting a box of magazines and journal subscriptions off of a top shelf is consistent with appellant’s claim of “pulling down the top row.”

² 5 U.S.C. §§ 8101-8193.

³ See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) (“injury” defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) (“traumatic injury” and “occupational disease or illness” defined).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

The Board finds that Dr. Dexter's August 14, 1996 opinion is sufficient to establish the element of causal relationship. He described the incident that occurred on May 1, 1996 and his description is consistent with the witnessed account given on appellant's claim form. Dr. Dexter also described appellant's medical course, complaints and findings. He reported that the employment incident had strained appellant's left serratus anterior muscle and that the mechanism of injury was consistent with an overhead stress load. Dr. Dexter addressed whether appellant sustained the injury alleged and provided medical reasoning to support his opinion.⁸

As Dr. Dexter's opinion is based on an accurate history, is of reasonable medical certainty and is supported by sufficient medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment, the element of causal relationship is established and appellant has met her burden of proof. The Board will set aside the Office's merit decision of February 6, 1998 and will remand the case for a determination of the nature and extent of any disability related to the May 1, 1996 injury.

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁷ *See William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ The Board notes that the Office's November 15, 1996 decision did not question the sufficiency of Dr. Dexter's medical reasoning. Instead, the Office found that the diagnosis of appellant's condition was unclear. The Board notes that Dr. Dexter diagnosed a strain to the left serratus anterior muscle.

The February 6, 1998 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Dated, Washington, D.C.
March 7, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member