

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA G. GLENN and U.S. POSTAL SERVICE,
POST OFFICE, Grand Rapids, MI

*Docket No. 99-543 Submitted on the Record;
Issued October 18, 2000*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury to her neck in the performance of duty.

On September 16, 1996 appellant, then a 32-year-old letter carrier filed a notice of traumatic injury and claim for continuation of pay/compensation, Form CA-1, alleging that on August 5, 1996, while carrying a mailbag around her neck, she sustained a bulging disc in her neck, in addition to pain in her neck, back, shoulder right arm and right thumb. On the reverse of the form, appellant's supervisor stated that he had no knowledge of appellant's injury and did not indicate that appellant stopped working.

In a September 18, 1996 letter, the Office of Workers' Compensation Programs advised appellant that the information submitted in her claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act.¹ The Office advised appellant of the additional medical and factual evidence needed to support her claim. In particular, appellant was directed to provide a physician's reasoned medical opinion, including a discussion by appellant's physician's as to the causal relationship between appellant's claimed injury and the August 5, 1996 incident.

By decision dated October 18, 1996, the Office denied appellant's claim. The Office found that appellant failed to submit evidence in response to the September 18, 1996 letter and, therefore, the record failed to demonstrate that she sustained an injury on August 5, 1996, as alleged.

By letter dated October 18, 1996, and received in the Office October 21, 1996, appellant forwarded medical reports. These reports included the results from two magnetic resonance imaging (MRI) tests, the first dated June 29, 1996, and read by Dr. D.K. Bhrany, a

¹ 5 U.S.C. §§ 8101-8103.

Board-certified neurologist. The second MRI report, from Dr. L.W. Lin, is dated August 18, 1996. While the MRI reports indicated that appellant had a herniated/protruding disc at the C5-6 level, the second report did not indicate a change in appellant's condition from the June 29, 1996 MRI reading. Appellant also forwarded a letter, dated August 16, 1996, from Dr. Bhrany to Dr. Rosario A. Villareal, her family doctor, in which Dr. Bhrany noted appellant had a history of neck pain since August 1995. Appellant previously treated her pain with medication and chiropractic manipulation.

Appellant also sent treatment notes from Dr. Villareal, dated June 12, August 5, 6, 20 and 30 and September 18, 1996. Dr. Villareal diagnosed a herniated disc of the cervical spine with radiculopathy.

Additionally, appellant forwarded a letter from Dr. Hugo M. Lopez Negrete, a Board-certified neurological surgeon, dated August 29, 1996, in which Dr. Lopez Negrete suggests appellant suffers from a very severe cervical radiculopathy, and further suggests that appellant undergo a cervical myelogram and postmyelogram computerized tomography scan. These tests were conducted on September 3, 1996 and concluded that appellant did have a small to moderate sized disc herniation at the C5-6 level.

By letter dated October 30, 1996, appellant filed a timely request for an oral hearing before an Office hearing representative.

The Office subsequently received a letter forwarded by appellant's representative, from Dr. Lopez Negrete, dated February 27, 1997, in which Dr. Lopez Negrete stated that the "clinical history and the facts set forth in her statement suggest that" appellant "acquired a herniated cervical disc as a direct consequence of her employment as a mail carrier." He continued that appellant's condition was caused by her job in 1995, but also later aggravated by her job by carrying a heavy weight load on her spine. He stated that while the findings of the two MRIs suggested only a very tiny disc herniation, clinical examination did reveal a very severe radiculopathy.

On December 10, 1997 a hearing was held before a hearing representative, at which time appellant testified on her own behalf. The hearing representative advised appellant of the type of medical evidence needed to establish her claim, and the record was held open for appellant to submit any new evidence. No new evidence was submitted. The hearing representative advised appellant and her counsel that appellant could file a different claim if she felt that her condition occurred over a period of time.

By decision dated February 3, 1998, the Office hearing representative affirmed the Office's October 18, 1996 decision. The Office hearing representative found that the Office properly denied appellant's claim because the record lacked any medical evidence which attributed appellant's medical condition to her work duties of August 5, 1996.

The Board finds that appellant has not met her burden of proof in establishing that she sustained an injury to her neck in the performance of duty on August 5, 1996.

An employee seeking benefits under the Act² has the burden of establishing that 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 limitations period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.⁵ The Office’s regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.⁶ The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.⁷

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁸

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁹

In the instant case, it is not disputed that appellant is an employee, or that she has been diagnosed with a herniated/protruding disc at the C5-6 level Dr. Lopez Negrete’s report, dated February 27, 1997, noted a history of neck pain, beginning in August 1995. Dr. Lopez Negrete

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Gene A. McCracken*, 46 ECAB 593 (1995).

⁶ 20 C.F.R. § 10.5(15).

⁷ *Richard D. Wray*, 45 ECAB 758, 762 (1994).

⁸ *Elaine Pendleton*, *supra* note 3.

⁹ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

attributed this pain to a herniated disc caused by her employment as a letter carrier. This report is not sufficient to meet appellant's burden of proof, however, because Dr. Lopez Negrete did not attribute appellant's neck condition to a specific incident on August 5, 1996, as appellant contends. He instead indicated that appellant's neck condition was due to ongoing factors of her federal employment, and occupational disease rather than a traumatic injury. Consequently, appellant failed to establish that her neck condition was causally related to the August 5, 1996 incident.

The decision of the Office of Workers' Compensation Programs dated February 3, 1998 is hereby affirmed.

Dated, Washington, DC
October 18, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member