

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY CALDWELL and U.S. POSTAL SERVICE,
BONITA SPRINGS, FL

*Docket No. 00-1401; Submitted on the Record;
Issued April 3, 2001*

DECISION and ORDER

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

The issue is whether appellant has established that her disability claim for wage loss on or after May 5, 1997 is causally related to the accepted employment injury of March 14, 1997.¹

On March 15, 1997 appellant, then a 25-year-old rural carrier, filed a claim for traumatic injury (Form CA-1) alleging that on March 14, 1997 she injured her head while in the performance of duty.

On April 17, 1997 the Office of Workers' Compensation Programs accepted appellant's claim for head contusion. The Office also required appellant to submit a narrative report from her doctor on his opinion on the relationship of any continuing disability to the accepted injury.

In a medical report dated April 9, 1997 and received by the Office on May 7, 1997, Dr. Edward F. Steinmetz, Board-certified in psychiatry and neurology, stated that a magnetic resonance imaging (MRI) scan of appellant's brain was normal, but that she had a "fairly prominent nystagmus" and recommended referral to a neuro-ophthalmologist to assess her post-trauma nystagmus.

On June 8, 1997 appellant filed a claim for wage loss from May 5 to June 18, 1997.

In a medical report dated August 4, 1997, Dr. Ronald J. Tusa, Board-certified in psychiatry and neurology, stated that appellant had voluntary nystagmus. He noted that appellant's saccade velocities were normal and that he could not detect flutter behind closed eyelids. Dr. Tusa noted that these symptoms are present in cases of involuntary flutter. He stated that he did not think the flutter was pathological, noting that he noticed no abnormalities. Dr. Tusa noted that appellant had a normal neurological examination and a normal MRI scan of the head.

By letter dated September 13, 1997, the Office notified appellant that it needed additional information to process her claim.

¹ Appellant received continuation of pay from March 21 to May 4, 1997.

In a medical report dated September 19, 1997, Dr. Tusa stated that appellant was disabled by her eye condition. He noted that the convergence disorder needed to be addressed and that she needed psychological counseling.

In a medical report dated September 24, 1997, Dr. Linda J. Gardiner, a Board-certified otolaryngologist, stated that she examined appellant that day and reported findings. Dr. Gardiner noted that appellant had normal ophthalmological examination, a normal MRI scan and a neurological examination, except for some possible nystagmus when first evaluated, and normal hearing. She recommended an electronystagmogram (ENG) and blood tests.

By decision dated October 15, 1997, the Office denied appellant's claim.

On October 13, 1998 appellant, through counsel, requested reconsideration. In support of her request appellant submitted an April 4, 1998 medical report from Dr. Tusa who stated that there has been no change in her eye flutter since his last examination. Upon examination that day the doctor found that appellant had voluntary nystagmus and a possible conversion disorder which requires counseling.

By decision dated December 8, 1999, the Office denied appellant's request for reconsideration.

The Board finds that appellant has not established her disability claim for wage loss on or after May 5, 1997 is causally related to the accepted employment injury of March 14, 1997.

In establishing a claim for compensation, two separate issues must be addressed: whether an injury was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and; whether there is a causal relationship between the injury and any disability or specific condition for which compensation is claimed, *i.e.*, "causal relationship." These are two distinct elements of a compensation claim.² Fact of injury must be established before the issue of causal relationship is addressed. However, acceptance of fact of injury is not contingent upon a claimant proving causal relationship between the injury and any disability or condition for which compensation is claimed. Thus, a claimant may, as in this case, establish that an injury occurred in the performance of duty as alleged, but fail to establish that the claimed disability or condition is causally related to the injury.³

In this case, the Office found that appellant sustained a contusion to the head and paid continuation of pay for the period March 21 to May 4, 1997. The issue which remains to be resolved is whether the March 14, 1997 head contusion rendered appellant disabled for work on or after May 5, 1997.

In support of her claim, appellant submitted medical reports from Dr. Tusa, dated August 4, 1997. In this report, Dr. Tusa stated that appellant's nystagmus was voluntary, that her saccade velocities were normal and that he could not detect flutter behind closed eyelids, that appellant had a normal neurological examination and a normal head MRI scan. Although he

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ As used in the Act, the term "disability" means incapacity because of injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity; see *Frazier V. Nichol*, 37 ECAB 528, 540 (1986).

then noted in his September 19, 1997 report that appellant was disabled as a result of her eye condition he did not establish a causal relationship between the condition and her work-related injury. It is noted that Dr. Tusa stated that he could detect eye flutter behind appellant's eye which was consistent with involuntary nystagmus, but he does not explain why appellant did not have this symptom in his August report and whether it was related to her work-related injury. Further, in her September 24, 1997 report, Dr. Gardiner stated that all appellant's tests were normal except for some possible nystagmus when first evaluated. Dr. Gardiner did not relate this speculative condition to appellant's work-related injury. None of the evidence submitted establishes that appellant was totally disabled on and after May 5, 1997 due to her accepted head contusion. None of the reports by Drs. Tusa and Gardiner provide medical rationale addressing the issue of whether appellant was disabled for work on and after May 5, 1997 due to the accepted condition of head contusion.

Appellant has failed to submit sufficient rationalized medical evidence from her physicians addressing the issue of whether she was medically disabled for work on or after May 5, 1997 due to the accepted head contusion. She has not submitted medical evidence setting forth, in sufficient detail and with supporting medical rationale, the causal relationship whereby the March 14, 1997 head contusion would render her unable to perform her customary job duties on and after May 5, 1997. Without such evidence, appellant has not established her claim for compensation on and after May 5, 1997.

Consequently, appellant had not met her burden of proof as she submitted insufficient medical evidence indicating that the accepted head contusion caused by the accepted March 14, 1997 employment injury caused a continuing disability on or after May 5, 1997.

The December 8, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
April 3, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member