

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DOROTHY M. FLEURY and U.S. POSTAL SERVICE,
POST OFFICE, Millerton, NY

*Docket No. 00-2194; Submitted on the Record;
Issued June 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established an injury while in the performance of duty on July 25, 1998.

On May 7, 1999 appellant then a 62-year-old distribution clerk, filed a traumatic injury claim alleging that on July 25, 1998 she sustained a right shoulder injury while lifting and moving a tub of flats. By decision dated July 15, 1999, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established that an injury occurred as alleged, nor had she submitted sufficient medical evidence. In a decision dated April 18, 2000, the Office hearing representative affirmed the prior decision.

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on July 25, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.³

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

³ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

In this case, the Office did not accept that the work incident occurred, finding that inconsistencies, such as late notification of injury, cast doubt as to whether the incident occurred as alleged. Appellant has, however, addressed the apparent inconsistencies. She indicated that she first believed she had strained a muscle that would heal without treatment.

In a report dated June 2, 1999, Dr. Amelia Martinko, an internist, indicated that appellant was treated on August 25, 1998, when she reported injuring her right shoulder at work. Dr. Martinko noted that appellant had shoulder pain and limited range of motion. A treatment note dated September 11, 1998 from Dr. Misha Kucherov, a neurologist, reports that appellant injured her right shoulder approximately one and a half months earlier. Dr. Kucherov indicated that appellant was advised to see an orthopedic surgeon. Appellant also explained that she delayed in filing the claim because she believed her private insurance would handle the claim.

Therefore, the Board finds that the record is sufficient to establish that the July 25, 1998 incident occurred as alleged. An employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.⁴ The evidence is not sufficient to refute appellant's statement that the work incident occurred on July 25, 1998.

The deficiency in the claim is with the medical evidence. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.⁵ In a report dated January 15, 1999, Dr. Gary Fink, an orthopedic surgeon, reported that appellant had an eight-month history of right shoulder problems, with no specific history of trauma. He diagnosed impingement syndrome and acromioclavicular joint arthritis of the right shoulder, and indicated that arthroscopic surgery was performed on that date.

Dr. Gray did not provide a reasoned opinion on causal relationship between the diagnosed shoulder condition and the July 25, 1998 employment incident. The record does not contain a medical report providing an accurate factual and medical history, with a rationalized medical opinion on causal relationship between appellant's shoulder condition and the employment incident. It is appellant's burden of proof to submit probative medical evidence, and she has not done so in this case.

⁴ *Thelma Rogers*, 42 ECAB 866 (1991).

⁵ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

The decisions of the Office of Workers' Compensation Programs dated April 18, 2000 and July 15, 1999 are modified to reflect that an incident on July 25, 1998 has been established, and affirmed as modified.

Dated, Washington, DC
June 8, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member