

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KATHY V. WILLIAMS and U.S. POSTAL SERVICE,
POST OFFICE, Kansas City, MO

*Docket No. 00-2465; Submitted on the Record;
Issued June 8, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant met her burden of proof to establish that she sustained a left upper extremity condition in the performance of duty on December 13, 1997; and (2) whether the refusal of the Office of Workers' Compensation Programs to reopen appellant's case for further consideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), constituted an abuse of discretion.

The Board finds the case is not in posture for decision regarding whether appellant met her burden of proof to establish that she sustained a left upper extremity condition in the performance of duty on December 13, 1997.

On December 15, 1997 appellant, then a 47-year-old air records processor, filed a traumatic injury claim alleging that she sustained an inflammatory left elbow condition on December 13, 1997 when her elbow was hit with a floor truck. By decision dated February 17, 1998, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence in support thereof. By decisions dated August 5, October 1, November 22, 1999 and February 3, 2000, the Office affirmed its February 17, 1998 decision. By decision dated July 12, 2000, the Office denied appellant's request for merit review.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim.² The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background,

¹ 5 U.S.C. §§ 8101-8193.

² *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

establishing causal relationship.³ However, it is well established that proceedings under the Act are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁴

The Board notes that, while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that appellant sustained an employment-related injury on December 13, 1997, and are not contradicted by any substantial medical or factual evidence of record. Therefore, while the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed left upper extremity condition and the employment incident of December 13, 1997, and are sufficient to require the Office to further develop the medical evidence and the case record.⁵

In a report dated December 23, 1997, Dr. Louis A. Orlando, an attending Board-certified internist, stated that appellant reported being hit at work "by a piece of metal while she was standing still about a week ago." Dr. Orlando indicated that appellant did not exhibit significant swelling or increased warmth, but she did have focal tenderness on the olecranon. He diagnosed left elbow contusion and possible olecranon bursitis.⁶ In a form report dated February 10, 1998, Dr. Orlando noted that appellant reported her left elbow was "struck by a piece of metal" on December 13, 1997. Dr. Orlando diagnosed left forearm extensor tendinitis and checked a "yes" box indicating that the condition was caused or aggravated by the reported incident.

In a report dated June 3, 1999, Dr. Orlando stated that appellant reported in December 1997 that, about a week prior to her visit, she was hit at work in her left elbow by a piece of metal. He stated, "At that point in time, it was my impression that she had a left elbow contusion and possibly some olecranon bursitis." Dr. Orlando indicated that since March 1998 appellant had been under the care of Dr. Alexandra Strong, a Board-certified orthopedic surgeon, for her left elbow condition.⁷ In a report dated October 11, 1999, Dr. Orlando noted the history of the December 1997 incident and stated, "I would note that[,] although the injury initially seemed to be consistent with a contusion or possible tend[i]nitis, it was later found, after further investigation, that this was cubital tunnel syndrome resulting from the injury in December 1997. As I mentioned, she has been cared for by Dr. Strong since March 1998 for the same condition

³ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

⁵ *See Robert A. Redmond*, 40 ECAB 796, 801 (1989).

⁶ In a report dated January 27, 1998, Dr. Orlando diagnosed left elbow contusion and probable tendinitis. In a report dated March 24, 1998, Dr. Orlando diagnosed left elbow contusion and cubital tunnel syndrome.

⁷ He noted that appellant was examined about five weeks later at which time she was thought to have a component of tendinitis.

that I initially saw her for in December 1997 and it should be fairly clear that the patient does have cubital tunnel syndrome and not olecranon bursitis or tend[i]nitis.”⁸

As noted above, the medical evidence consistently shows that appellant sustained some form of employment incident on December 13, 1997. The Board notes, however, that it remains unclear what type of employment injury was sustained on December 13, 1997 and whether it caused disability from work.

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an employment-related injury on December 13, 1997. The Office should prepare a statement of accepted facts and obtain a medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The February 3, 2000 and November 22 and August 5, 1999 decisions of the Office of Workers’ Compensation Programs are set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.⁹

Dated, Washington, DC
June 8, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

⁸ In a report dated August 30, 1999, Dr. Orlando provided an account of appellant’s condition which was similar to that contained in his June 3, 1999 report and stated, “During her job she has to lift heavy packages and postage and certainly the heavy lifting did not help her symptoms and probably, most certainly aggravated them.” Appellant was advised that she should file an occupational disease claim if she felt her work duties over a period of time caused or aggravated her elbow condition. It is unclear from the record whether appellant has filed such a claim. The medical evidence of record currently does not establish the existence of such a condition.

⁹ Given the Board’s disposition of the first issue of this case it is not necessary for it to consider the second issue.