

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RAY A. WHITE and U.S. POSTAL SERVICE,
POST OFFICE, Florissant, MO

*Docket No. 00-750; Submitted on the Record;
Issued March 15, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met his burden of proof to establish that he sustained an injury on June 25, 1996, causally related to his federal employment.

On July 2, 1996 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim alleging that on June 25, 1996 he sustained a right thigh muscle strain when he felt a "slight pop" while delivering mail. On the reverse side of the claim form, his supervisor noted that appellant first received medical care on July 2, 1996 from Dr. Brenda Mallard, a treating internist. Appellant stopped work on July 2 and returned to limited- or light-duty work on July 5, 1996.

To support his claim, appellant submitted a duty status report dated July 2, 1996 from Dr. Kim L. McDonald, Board-certified in internal medicine, noting appellant's activity restrictions. She diagnosed right thigh muscle strain and advised him to resume work that day. Dr. McDonald restricted appellant from climbing, kneeling, driving a vehicle and operating machinery. She restricted him from lifting or carrying greater than 20 pounds and to intermittent sitting, standing, walking, bending/stooping, twisting, pulling/pushing, grasping, fine manipulation and reaching above the shoulder.

Appellant also submitted notes dated July 2, 1996 from Drs. Mallard and McDonald in which Dr. McDonald diagnosed a right thigh muscle strain and advised appellant that he could resume limited work that day.

Appellant further submitted a narrative statement dated July 2, 1996 in which he alleged that he sustained worsening pain after June 25, 1996 when he popped a joint while delivering mail.

By letter dated July 24, 1997, the Office of Workers' Compensation Programs advised appellant that the evidence was insufficient to establish his claim and it requested additional factual and medical evidence including responses to a list of questions. The Office allowed him 30 days to respond to its request.

Appellant submitted a prescription note and duty status report dated July 8, 1996 from Dr. Reymal Caldwell, a treating general practitioner. He also submitted a brief report dated July 22, 1996 from Dr. Donald H. Brancato, a Board-certified orthopedic surgeon, diagnosing a soft tissue injury, a “probable tendon or muscle stretch” and noting his range of motion. Dr. Brancato stated, “[i]t is difficult to tell what this is” and advised that appellant could work without limitations. A note dated July 24, 1996 in which Dr. Terry J. Weis, Board-certified in internal medicine, advised that appellant was unable to work from that date until July 31, 1996.

By decision dated October 29, 1996, the Office denied appellant’s claim on the grounds that the evidence of record failed to establish that he sustained an injury on June 25, 1996 in the performance of duty causally related to his federal employment.

By letter dated November 18, 1996, appellant requested reconsideration of the Office’s October 29, 1996 decision. To support his request, he submitted an unsigned memorandum from Dr. Weis to Dr. Caldwell stating that appellant’s examination revealed good positioning and healing of his degenerative arthritis. Appellant also submitted reports dated July 10, 1996 from Dr. Peter Wenig, a Board-certified radiologist, who stated that an examination revealed “a tiny focus of increased activity within the right acetabulum, perhaps representing a stress injury.”

Appellant further submitted an undated narrative statement in which he described the June 25, 1996 employment incident, his alleged symptoms and medical treatment.

By merit decision dated January 31, 1997, the Office denied appellant’s reconsideration request on the grounds that the evidence submitted did not warrant modification of its October 29, 1996 decision. The Office found that the medical evidence did not contain a rationalized medical opinion addressing the issue of whether appellant’s condition was causally related to the June 25, 1996 employment incident.

Subsequently, appellant filed an appeal with the Board, however, there was a delay in transmitting the case record from the Office to the Board. Therefore, on May 21, 1999, the Board ordered that the case be remanded to the Office for reconstruction and proper assemblage of the case record. The Board further ordered that the Office issue an appropriate decision in order to fully protect appellant’s appeals rights.

By merit decision dated September 16, 1999, the Office denied appellant’s reconsideration request on the grounds that the evidence submitted did not warrant modification of its October 29, 1996 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on June 25, 1996, causally related to his federal employment.¹

¹ The Board’s jurisdiction to consider and decide appeals from final Office decisions extends only to those decisions issued by the Office within one year of the filing of the appeal. Therefore, the Board lacks jurisdiction to review the Office’s January 31, 1997 and October 29, 1996 decisions as more than one year past between those decisions and December 10, 1999, the date appellant’s appeal was filed with the Board. 20 C.F.R. §§ 501.2(c), 501.3(d)(2); *Jeanette Butler*, 47 ECAB 128 (1995).

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his 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 limitation 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 is causally related to the employment injury.³ Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his disability and/or condition relates to the employment incident. As the Office did not dispute that the June 25, 1996 employment incident occurred at the time, place and in the manner alleged, the remaining issue is whether the alleged injury was caused by the employment incident.

In order to satisfy his burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the alleged injury was caused by the employment incident.⁷ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's alleged injury and the employment incident. The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.⁸

The medical evidence of record fails to show that appellant sustained an injury in the performance of duty on June 25, 1996 causally related to his federal employment. The July 2, 1996 duty status report and notes from Drs. McDonald and Mallard contained a diagnosis of a right thigh muscle strain and restricted appellant's work activities but they did not include a rationalized medical opinion addressing the issue of whether his condition was causally related

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ *See John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Elaine Pendleton*, *supra* note 3 at 1145.

⁷ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

⁸ *See Shirley R. Haywood*, 48 ECAB 404, 407 (1997).

to the June 25, 1996 employment incident. Similarly, the July 8, 1996 duty status report and progress note from Dr. Caldwell, Dr. Wenig's July 10, 1996 reports, Dr. Brancato's July 22, 1996 report and Dr. Weis' July 24, 1996 note failed to address the causal relationship issue.

The decision of the Office of Workers' Compensation Programs dated September 16, 1999 is affirmed.

Dated, Washington, DC
March 15, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member