

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of COLLIE RAY ROBERTS and U.S. POSTAL SERVICE,
POST OFFICE, Winter Haven, FL

*Docket No. 00-1436; Submitted on the Record;
Issued March 21, 2001*

DECISION and ORDER

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

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty causally related to the factors of his federal employment.

On October 3, 1998 appellant, then a 52-year-old custodial group leader, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that he sustained a ruptured disc and bone spurs which were causally related to his federal employment. He stated that his condition was the result of moving furniture, dumping trash, mopping and waxing floors during his federal employment. Appellant stated he first became aware of his condition on September 10, 1995. He returned to restricted duty of no lifting over 20 pounds and no mopping.

Accompanying appellant's claim were medical reports from Dr. John C. Amann, a Board-certified neurologist, dated September 23 and October 2, 1998; a September 28, 1998 progress note from Dr. Paul A. Dowdy, a Board-certified orthopedic surgeon; a duty status report prepared by Dr. Dowdy dated September 28, 1998; a coworker statement dated October 7, 1998 and two undated narrative statements. Dr. Amann's reports documented appellant's complaints of left arm and right shoulder pain developing in early June 1998. He noted that a magnetic resonance imaging (MRI) scan of the cervical spine showed disc disease and herniation at the level C7-T1. Dr. Amann noted that the work-related event was a major factor in appellant's current symptomatology. He noted that appellant's preexisting degenerative changes may have predisposed appellant to disc disease. Dr. Dowdy's progress note documented appellant's pain of his left elbow and neck. The duty status report noted a date of injury of June 5, 1998 and a diagnosis of medial epicondylitis of the right elbow. The statement of the coworker indicated that appellant informed him on June 5, 1998 that he sustained an injury to his left elbow and right arm. Appellant's narrative statement noted that he sustained a separate injury on June 5, 1998 for which he sought treatment for his left elbow and right side.¹ He noted a 1997 surgery in

¹ By letter dated July 13, 1998, the Office of Workers' Compensation Programs notified appellant that his claim in file number 06-0706329 was accepted for a left elbow strain and right shoulder strain. This claim is not before

the cervical area. None of the above documents submitted by appellant mention an injury or illness arising on or around September 10, 1995.

The employing establishment submitted appellant's employment records including a position description as well as an application for employment.

In a letter dated October 26, 1998, the Office advised appellant of the type of factual and medical evidence needed to establish his claim and requested that he submit such evidence. The Office particularly requested that appellant submit a physician's reasoned opinion addressing the relationship of his claimed condition and specific employment factors.

Additional medical evidence was submitted which comprised of employment medical examinations from 1975 to 1987.

In a decision dated December 28, 1998, the Office denied appellant's claim as the medical evidence was not sufficient to establish that the condition was caused by the employment factor as required by the Federal Employees' Compensation Act.² The Office found that the medical evidence submitted related to the June 1998 injury;³ however, there was no medical evidence submitted which indicated that a new injury was diagnosed which related to new employment factors.

By letter dated January 14, 1999, appellant requested reconsideration of the decision dated December 28, 1998. He submitted additional factual and medical evidence including a progress note from Dr. Dowdy dated July 24, 1998; an attending physician's report from Dr. Lowell Zeid, a specialist in occupational medicine, dated June 8, 1998; and a duty status report prepared by Dr. Zeid dated June 8, 1998.

By decision dated April 8, 1999, the Office denied appellant's request for modification of its December 28, 1998 decision on the grounds that the evidence submitted was insufficient to warrant modification.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, causally related to the factors of his federal employment.

An employee seeking benefits under the Act has the burden of establishing 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 filed within the applicable time limitation 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."⁴ These are the essential elements of each and every compensation

the Board at this time.

² 5 U.S.C. §§ 8101-8193.

³ *Supra*, at note 1.

⁴ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁵

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.⁶ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁷ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.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

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 claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.¹⁰

In this case, it is not disputed that appellant was moving furniture, dumping trash and mopping and waxing floors. However, the medical evidence is insufficient to establish that this activity caused or aggravated a medical condition. None of the medical reports submitted by appellant pertain to the occupational disease claim filed on October 3, 1998, rather they relate to a separate employment injury of June 5, 1998 which was accepted by the Office. Furthermore,

⁵ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁶ *Elaine Pendleton*, *supra* note 4.

⁷ *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

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

¹⁰ *James Mack*, 43 ECAB 321 (1991).

there were no medical records submitted which were contemporaneous with the date appellant first became aware of his illness, September 5, 1995. The earliest reports are those in 1998. Specifically, Dr. Dowdy's reports of July 24 and September 28, 1998 reference an injury to the left elbow and a trapezius strain in June 1998 and do not indicate that the injury stems back to an injury in September 1995, the date indicated on appellant's Form CA-2. Dr. Dowdy, in his report of July 24, 1998, indicated that "appellant was well until June 1998 when he was working as a custodian with the employing establishment when he was dumping plastic bags of trash into a dumpster and felt a sudden pain and a popping sensation in his left elbow. He also feels he twisted his neck." Dr. Dowdy did not indicate knowledge of a preexisting neck condition in 1995 nor did he relate appellant's preexisting condition to his duties as a custodian. The Board notes that Dr. Dowdy's reports do not indicate that he is familiar with the history of the injury.¹¹ Therefore, these reports are insufficient to meet appellant's burden of proof.

Dr. Amann's reports dated September 23 and October 2, 1998 refer to an injury in June 1998 and do not indicate that this injury stems back to an injury sustained in 1995. Dr. Zeid's medical reports also pertain to appellant's June 5, 1998 employment injury. He does not reference an injury in 1995 nor does he indicate that appellant's diagnosed neck condition in June 1998 related back to a neck condition in 1995.¹² Therefore, these reports are also insufficient to meet appellant's burden of proof.

The remainder of the medical evidence fails to provide an opinion on the causal relationship between this incident and appellant's diagnosed condition. For this reason, this evidence is not sufficient to meet appellant's burden of proof.

¹¹ See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

¹² *Id.*

The decisions of the Office of Workers' Compensation Programs dated April 8, 1999 and December 28, 1998 are hereby affirmed.

Dated, Washington, DC
March 21, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member