

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LUTICIA A. HAWTHORNE and U.S. POSTAL SERVICE,
POST OFFICE, Trenton, NJ

*Docket No. 99-2454; Submitted on the Record;
Issued March 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issues are: (1) whether appellant has met her burden of proof to establish that she sustained a back injury in the performance of duty on or about October 23, 1998; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for an oral hearing.

On October 31, 1998 appellant, then a 33-year-old letter carrier, filed a claim for traumatic injury (Form CA-1) alleging that on October 24, 1998 she noticed sharp pain in her upper back when she "woke up to turn off alarm clock." On the reverse side of the claim form, the employing establishment stated that the alleged injury occurred on October 23, 1998.

In a report dated October 26, 1998, Dr. Shari E. Diamond, appellant's attending osteopath, stated that appellant had reinjured her back while in the performance of duty on October 24, 1998. In a medical report that same day, appellant related her history of injury noting that she denied a new back injury. In a report dated October 30, 1998, Dr. Diamond stated that appellant had lumbosacral and thoracic spine sprain and was released to duty with restrictions.

By letter dated November 16, 1998, the Office advised appellant that she needed to submit additional information regarding her claim for compensation.

In a report dated November 3, 1998 and received by the Office on November 16, 1998, Dr. Jay D. Stzathmary, appellant's treating osteopath, stated that appellant had a strain of the cervical and thoracic spine and that she was totally disabled from October 24 to November 13, 1998.

By narrative dated November 27, 1998, appellant stated that her injury occurred on October 23, 1998 and was caused by "lifting and carrying heavy volumes of mail on my back and shoulders with my mailbag, to perform my duties."

By decision dated December 17, 1998, the Office denied appellant's claim, finding that the evidence of record was insufficient to establish that appellant sustained an injury at the time, place and in the manner alleged.

On February 8, 1999 appellant requested reconsideration.¹

In support of her request, appellant submitted multiple medical reports from Dr. David Weiss, her treating osteopath. In a report dated December 4, 1998, Dr. Weiss stated that appellant sustained post-traumatic cervical and dorsal strain and sprain and cervical and dorsal myofascitis as a result of carrying an excessive load of mail on October 24, 1998. He essentially repeated his diagnosis on December 14, 21 and 24, 1998. In a medical report dated January 8, 1999, Dr. Weiss stated that the "competent producing factor for this patient's injuries are to be considered the October 24, 1998, work-related injury sustained while under the employ of the [employing establishment]."

By letter dated February 22, 1999, the Office advised appellant that the evidence submitted was insufficient to establish her claim and advised her to submit additional factual and medical evidence supportive of her claim including "evidence of the amount of mail ... carried on October 23, 1998."

In a report dated March 4, 1999, the employing establishment noted that appellant's mail load on October 24, 1998 was normal for a three-mile route and that a pushcart was used for deliveries.

In an undated letter received by the Office on March 17, 1999, a coworker stated that on October 23, 1998 appellant "mentioned how heavy the mail had been and that her back was hurting her."

By merit decision dated July 19, 1999, the Office denied appellant's request for reconsideration on the basis that the evidence submitted was insufficient to warrant modification of the prior decision.

By letter dated July 28, 1999, appellant requested an oral hearing.

On August 30, 1999 the Office denied appellant's request for an oral hearing on the grounds that appellant had previously requested reconsideration.

The Board finds that appellant has submitted evidence sufficient to establish a *prima facie* case and to require further development of the evidence.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the

¹ Appellant initially requested an oral hearing but withdrew that request.

² 5 U.S.C. §§ 8101-8193.

individual is an “employee of the United States” within the meaning of the Act,³ and that the claim was filed within the applicable time limitation of the Act. An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,⁴ that the injury was sustained while in the performance of duty,⁵ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual’s employment.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁷

In this case, the only doctor addressing appellant’s back condition is Dr. Weiss, her treating osteopath, who examined appellant on the day following the alleged injury and made his diagnosis of cervical and dorsal strain, sprain and myofascitis. He stated that the October 24, 1998 work incident was the competent producing cause of her condition. The Board finds that, given the absence of any contrary medical evidence, Dr. Weiss’ reports, although lacking sufficient rationale, are sufficient to require further development of the record by the Office.⁸

On remand the Office should prepare a statement of accepted facts and refer it along with appellant and her medical records for a second opinion examination to obtain a rationalized opinion as to whether appellant sustained an injury as alleged on October 24, 1998, the nature of the injury sustained and whether any disability resulted from the alleged injury.⁹

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

⁴ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *Steven R. Piper*, 39 ECAB 312 (1987).

⁷ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Rebel L. Cantrell*, 44 ECAB 660 (1993); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ As this case will be remanded for further medical development, the issue relating to appellant’s request for a hearing is moot.

The decisions of the Office of Workers' Compensation Programs dated August 30 and July 19, 1999 and December 17, 1998 are set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, DC
March 5, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member