

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROL L. FOSTER and U.S. POSTAL SERVICE,
BULK MAIL FACILITY, Kansas City, KS

*Docket No. 00-1947; Submitted on the Record;
Issued May 3, 2001*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has established that she sustained an injury on July 3, 1999 causally related to factors of her federal employment.

On July 5, 1999 appellant, then a 41-year-old clerk, filed a claim alleging that she hurt her shoulder, neck, arm, elbow and hand on the left side. She attributed her injury to the following:

“Supervisor Sherry Hansen stressed me out, forced me to work taping labels on the letter trays, which caused my neck, shoulder, arm, elbow and hand to go numb and have severe pain with arm [and] hand turning a bright red [and] swollen to the extent of not being able to feel my fingers.”

Appellant stopped work on July 3, 1999.

In an accompanying statement, the employing establishment controverted the claim. Ms. Hansen stated that on July 3, 1999 appellant was “taping labels on letter trays. I had furnished her a desktop tape dispenser and told her that she would have only to use her right hand to pull the tape off and tape the label on the tray.”

By letter dated July 28, 1999, the Office of Workers' Compensation Programs requested additional factual information from appellant, including support for her allegations that she was forced to work with her left upper extremity. The Office also requested a rationalized medical report addressing whether she had any condition or disability causally related to the described July 3, 1999 work incident.

By decision dated September 1, 1999, the Office denied appellant's claim on the grounds that she did not established that she sustained an injury as alleged. The Office found that the medical evidence submitted was not sufficient to show that she sustained an injury or worsening in her condition “that would render her totally disabled from limited[-]duty work.” The Office

also found that appellant had not established that she “was forced to work outside her prescribed medical limitations” and, therefore, had not established that she sustained an emotional condition in the performance of duty.

In a letter dated September 9, 1999, appellant, through her representative, requested a hearing before an Office hearing representative. At the hearing on February 16, 2000, she testified that the Office had previously accepted that she sustained left shoulder strains in 1997 and March 1998. Appellant related that her supervisor assigned her work outside her restrictions on July 3, 1999 and that she performed the duties until lunchtime. She also specified that her claim was for an aggravation of her left shoulder condition rather than a stress-related condition.

By decision dated March 31, 2000 and finalized April 7, 2000, the hearing representative affirmed the Office’s September 1, 1999 decision. The hearing representative found that the incident described by appellant occurred as alleged but that the medical evidence was insufficient to establish that she sustained any condition or disability causally related to the July 3, 1999 employment incident.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury on July 3, 1999 causally related to factors of her federal employment.

An employee seeking benefits under the Federal Employees’ Compensation Act¹ 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 timely filed within the applicable time limitation period of the Act² and that an injury was sustained in the performance of duty.³ These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990).

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

⁶ *Id.*

In this case, the Office accepted that appellant was a federal employee, that she timely filed her claim for compensation benefits and that the workplace incidents or exposures occurred as alleged. The question therefore becomes whether this incident or exposure caused an injury.

In support of her claim, appellant submitted a work status report dated July 3, 1999, in which a physician diagnosed an exacerbation of chronic left upper extremity pain and found that she could return to work with restrictions on using her left arm. She further submitted a July 6, 1999 report in which a physician diagnosed chronic left upper extremity pain and found that she could return to work with limited use of her left arm on that date and return to work with her usual restrictions on July 12, 1999. In these reports, however, the physicians did not provide a history of injury or relate appellant's restrictions to the July 3, 1999 employment incident. Thus, their opinions are of little probative value.

In an unsigned state workers' compensation form, Dr. J. Patrick Walker described the history of injury related by appellant, diagnosed chronic left upper extremity pain and released her to light work on July 6, 1999 and to her regular work on July 12, 1999. She, however, did not specifically relate any worsening of appellant's condition or disability to the July 3, 1999 employment incident. Consequently, his opinion is insufficient to meet appellant's burden of proof.

In a note dated July 14, 1999, a physician found that appellant should remain off work until July 19, 1999. In a note dated July 19, 1999, a physician found that appellant should keep her left arm in a sling and not pull or reach with her right arm until reevaluated on July 28, 1999. Neither of the physicians, however, addressed the cause of appellant's disability.⁷

In a work status report dated July 27, 1999, Dr. Glenn M. Amundson, a Board-certified orthopedic surgeon and appellant's attending physician, diagnosed left shoulder arm pain and found that she could return to work with restrictions. As he did not provide a history of the July 3, 1999 employment incident, list findings on examination or address causation, his opinion is of little probative value.

None of the reports submitted by appellant contained a specific diagnosis, related any change in her condition to the July 3, 1999 employment incident or provided any medical rationale explaining how the incident caused or aggravated a left upper extremity condition. To be of probative value, a physician must address the specific facts and medical condition applicable to appellant's case and support his or her findings with sound medical reasoning.⁸

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between her claimed condition and her employment.⁹ To establish causal relationship, appellant must submit a physician's report in

⁷ *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

⁸ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁹ *Donald W. Long*, 41 ECAB 142 (1989).

which the physician reviews the employment factors identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination of appellant, state whether the employment injury caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge her burden of proof.¹⁰

The decisions of the Office of Workers' Compensation Programs, dated March 31, 2000 and finalized April 7, 2000 and dated September 1, 1999, are hereby affirmed.

Dated, Washington, DC
May 3, 2001

David S. Gerson
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

¹⁰ Following the Office's April 7, 2000 decision, appellant submitted additional evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).