

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA L. FERRELL and U.S. POSTAL SERVICE,
POST OFFICE, Spencer, IA

*Docket No. 01-923; Submitted on the Record;
Issued November 6, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on June 16, 1999.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury while in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of 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 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 are causally related to the employment injury.² These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁴ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

caused a personal injury.⁵ The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.⁶

On July 5, 2000 appellant, then a 64-year-old distribution clerk, filed a claim alleging that she hurt her back, left buttock and left leg after picking up mail at work on June 16, 1999.⁷ By decision dated August 29, 2000, the Office of Workers’ Compensation Programs denied appellant’s claim on the grounds that she did not submit sufficient evidence to establish that she sustained an injury. By decision dated December 27, 2000, the Office affirmed its August 27, 2000 decision.

In support of her claim, appellant submitted an August 30, 1999 report from Dr. Kirke H. Wheeler, an attending Board-certified surgeon, who indicated that she reported developing a lump in her left flank after a “lifting maneuver.” Dr. Wheeler noted that appellant had an area of increased girth on the left buttock and stated: “I am not sure this is a definable hernia or a paralyzed muscle belly in that location, possibly secondary to back injury.” This report does not support appellant’s claim because it does not contain an opinion indicating that appellant sustained an employment injury on June 16, 1999 as alleged.⁸

Appellant also submitted an August 25, 2000 report from Dr. Verland Rients, an attending chiropractor, who stated that appellant had reported on June 22, 1999 that she had experienced back, groin and buttock pain after lifting five days earlier. He indicated that appellant was treated for a minor to moderate low back sprain/strain which mostly resolved after two treatments. He added that appellant’s injury was “consistent with the stresses of her duties” at work.⁹

The opinion of Dr. Rients has no probative value on whether appellant sustained an employment-related injury because his report does not constitute medical evidence within the meaning of the Act. Under section 8101(2) of the Act, chiropractors are considered physicians, and their reports considered medical evidence, only to the extent that they treat spinal subluxations as demonstrated by x-ray to exist.¹⁰ Although Dr. Rients apparently obtained

⁵ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

⁷ Appellant indicated that a lump appeared on her left side. She did not stop work at the time of the claimed injury.

⁸ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship). Appellant submitted a June 22, 1999 note which indicated that she felt a pop in her back while lifting five days earlier. However, the note was not signed and did not provide any diagnosis or cause of injury.

⁹ Dr. Rients indicated that he obtained x-rays of appellant’s spine.

¹⁰ 5 U.S.C. § 8107(a); see *Jack B. Wood*, 40 ECAB 95, 109 (1988).

x-rays, he did not indicate in any of his reports that appellant had subluxations as demonstrated by x-rays to exist.

The decisions of the Office of Workers' Compensation Programs dated December 27 and August 29, 2000 are affirmed.

Dated, Washington, DC
November 6, 2001

Willie T.C. Thomas
Member

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member