

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLINE THOMAS and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Memphis, TN

*Docket No. 02-242; Submitted on the Record;
Issued August 13, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant sustained a head injury in the performance of duty on June 6, 1997 as alleged.

This case was previously on appeal. In a decision dated April 6, 2000, the Board found that appellant had not established that her contact with a forklift caused her to strike her head and that the Office did not abuse its discretion by refusing to reopen her claim for merit review.¹ However, the Board reversed the Office's finding that appellant had not sustained an injury in the performance of duty on July 6, 1997 and found that appellant had sustained right muscle hand strain, which had resolved. The history of the case is contained in the Board's prior decision and is incorporated by reference.²

Subsequent to the Board's decision, appellant requested reconsideration in an undated letter, which the Office received on December 7, 2000.³ In support of her request, appellant submitted her background statement, an October 5, 1998 arbitration decision, her summary of the arbitrator's decision, a copy of her CA-1 claim form, reports dated June 6, 1997 from Methodist Health Systems, appellant's personal transcript of telephone calls for the period June 6 to 10, 1997, reports dated June 27, 1997 and January 16, 1998 by Dr. Lance J. Wright, July 2, 1997 letters from the Office, letters dated January 10 and July 24, 1997 from appellant, a June 13, 1997 work restriction evaluation by Dr. Manuel F. Carro, a statement by Janice Lyles, copies of the Office decisions denying her claim, a June 19, 1997 letter from the employing establishment

¹ 51 ECAB _____ (Docket No. 98-2353, issued April 6, 2000).

² On June 5, 2000 the Office accepted appellant's claim for a resolved muscle strain of the right hand pursuant to the Board's April 6, 2000 decision.

³ Appellant filed a recurrence claim on December 3, 2000 for recurring headaches caused by the June 6, 1997 injury. In a letter dated February 12, 2001, the Office advised appellant that her claim had been accepted for a right hand sprain and that any injury to her head or arm had not been accepted.

challenging appellant's claim, a June 9, 1997 leave slip, a statement by David Brownlee and the Board's April 6, 2000 decision.

In the October 5, 1998 arbitration decision, the issue resolved was whether the appellant's removal by the employing establishment was for just cause and, if not, what the appropriate remedy was. The arbitrator stated that "the record shows the grievant's medical condition to have resulted from the accident of June 6, 1997," and recommended "that the Postal Service somehow manage to undo the wrong that has been done." In concluding, the arbitrator found appellant's grievance to be sustained and that the employing establishment wrongfully terminated her employment.

On March 8, 2001 the Office denied appellant's request for a merit review on the basis that the evidence submitted was duplicative of evidence already in the record.

Appellant requested reconsideration by letter dated March 23, 2001. In support of her request she submitted an October 5, 1998 arbitration award, a copy of her CA-1 form, Methodist hospital reports dated June 6, 1997, appellant's personal transcript of telephone calls for the period June 6 to 10, 1997, reports dated June 27, 1997 and January 16, 1998 by Dr. Wright, a June 9, 1997 leave slip, letters dated July 2 and 10, August 5 and 28 and December 24, 1997 from the Office, a June 13, 1997 report by Dr. Carro, letters from appellant dated July 5 and 24, 1997 and January 10, 1998, statements by Ms. Lyles and Mr. Brownlee, a June 19, 1997 letter from the employing establishment, the Board's April 6, 2000 decision, an undated letter requesting reconsideration, an undated letter listing her exhibits and a summary of the arbitrator's decision.

In its May 24, 2001 decision, the Office found that appellant had submitted new and relevant evidence, which consisted of an October 5, 1998 arbitration award, her personal telephone call transcripts for the period June 6 to 10, 1997, her June 5, 1997 letter, an undated reconsideration request, a summary of the arbitrator's decision and an undated letter with a list of exhibits and thus warranted a merit review of the claim. The remainder of the evidence appellant submitted was found to be duplicative of evidence already contained in the record and reviewed. The new and relevant evidence was found to be insufficient to establish that she injured her head on June 6, 1997. The Office, therefore, denied appellant's request for modification as the evidence submitted was insufficient to warrant modification of her claim.

The Board finds that appellant did not sustain a head injury in the performance of duty on June 6, 1997 as alleged.

An employee seeking benefits under the Federal Employees' Compensation 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 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.⁴

⁴ *Trina Bornejko*, 53 ECAB ____ (Docket No. 01-1118, issued February 27, 2002).

In the instant case, the Board previously found the evidence insufficient to establish that she sustained a head injury. With her request for reconsideration appellant's new evidence consisted of an October 5, 1998 arbitration award, her personal telephone call transcripts for the period June 6 to 10, 1997, her June 5, 1997 letter, an undated reconsideration request, a summary of the arbitrator's decision and an undated letter with a list of exhibits. None of the evidence submitted by appellant cures the deficiencies in the evidence. In the Board's prior decision, it found that appellant had not sustained a head injury due to the inconsistencies in the evidence regarding whether appellant sustained a blow to the head on June 6, 1997. The evidence submitted with her claim to support appellant's allegation that she had been knocked unconscious for several minutes was conflicting as her being unconscious had not been mentioned by any of the witness statements, appellant did not mention a head injury in her initial emergency room treatment and Dr. Wright, in his January 16, 1998 report, seemed to dispute this. The transcripts submitted by appellant of personal telephone calls the period June 6 to 10, 1997 failed to mention a head injury or even that she was knocked unconscious on June 6, 1997. Thus, the telephone call transcripts do not correct the deficiencies noted by the Board in its prior decision.

Regarding the October 5, 1998 Arbitration Award, the Board has held that findings of factual determination made by other agencies pursuant to other statutory schemes are not binding on the Office or the Board with respect to whether the individual is disabled under the Act.⁵ Thus, the comments of the arbitrator regarding whether appellant had sustained a head injury on June 6, 1997 is not sufficient to overcome the deficiencies in the evidence as found by the Board in its previous decision.⁶

⁵ See *Stephen R. Lubin*, 43 ECAB 564, 568 (1992); *Hazelee K. Anderson*, 37 ECAB 277, 283 (1986).

⁶ The findings of other administrative agencies are not dispositive of proceedings under the Act, which is administered by the Office and the Board; see *Richard L. Ballard*, 44 ECAB 146 (1992).

The decision of the Office of Workers' Compensation Programs dated May 24, 2001 is hereby affirmed.

Dated, Washington, DC
August 13, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member