

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUDY L. ALLISON and U.S. POSTAL SERVICE,
PROCESSING & DISTRIBUTION CENTER, Pasadena, CA

*Docket No. 02-151; Submitted on the Record;
Issued December 13, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty on May 24, 1996.

On May 28, 1996 appellant, then a 34-year-old mailhandler, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that she sustained a head injury as a result of a May 24, 1996 incident. She reported that she was struck in the head when a coworker tried to throw a parcel over her head. In a May 28, 1996 statement, the coworker reported that the parcel was lightweight, although the exact weight was undetermined.

By decision dated July 31, 1996, the Office of Workers' Compensation Programs denied the claim, finding that the medical evidence was insufficient to establish an injury on May 24, 1996. In a decision dated June 23, 1997, an Office hearing representative remanded the case for further development of the medical evidence.

The Office referred appellant, medical records and a statement of accepted facts to Dr. Thomas DiJulio, a neurologist. In a report dated August 4, 1997, he stated that any symptoms from the employment incident would have subsided within a few days or at most a couple of weeks and appellant's continuing complaints were not employment related.

By decision dated September 24, 1997, the Office denied the claim, finding that the weight of the evidence was represented by Dr. DiJulio. In a decision dated June 10, 1999, an Office hearing representative affirmed the September 24, 1997 decision. By decision dated October 24, 2000, the Office denied modification. In a decision dated July 17, 2001, the Office again denied modification.

The Board finds that the evidence is sufficient to establish a minor head injury in the performance of duty on May 24, 1996, with no period of total disability established for this injury.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² 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 that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.³

The record does establish an employment incident on May 24, 1996. Although there is some discussion as to how much the parcel that struck appellant weighed, the evidence of record indicates that the parcel was not weighed. It was described by the coworker as "light" and "not heavy," but its actual weight is undetermined.

The Office accepted that an employment incident occurred, but found that no injury was established as causally related. While appellant has alleged that the employment incident contributed to several different conditions, the initial question presented is whether there was any injury causally related to the employment incident. In this regard, the Board notes that, in a May 1, 1997 report, Dr. Michael Randall, an employing establishment physician Board-certified in preventative medicine, reviewed the medical evidence and clearly stated that "the injury sustained on May 24, 1996 was a minor head contusion resulting in post-traumatic headaches that reasonably should have resolved within a couple of weeks." The second opinion physician, Dr. DiJulio, does not appear to contest that appellant sustained a minor head injury; he also noted that symptoms from the incident should have resolved in a couple of weeks.

The Board accordingly finds that the medical evidence is sufficient to establish a minor head contusion with post-traumatic headaches as employment related. With respect to total disability resulting from this injury, however, the record does not contain probative medical evidence establishing a period of disability. It is appellant's burden of proof to establish that any disability for which compensation is claimed is causally related to the employment injury.⁴

At the time of injury, appellant had been working a light-duty position due to a nonemployment-related motor vehicle accident. She did not stop work immediately after the incident; the claim form indicates she stopped working on May 27, 1996. In a note received by the employing establishment on June 7, 1996, Dr. Richard DeAndrea requested that appellant be off work from May 24 to June 5, 1996. He stated that appellant sustained "severe blunt trauma" to the head, which is not a complete and accurate history and he did not provide further detail and explanation. In a report dated July 24, 1996, Dr. John Weaver, an internist, reported that he had examined appellant on May 24, 1996, but he does not discuss a specific period of total

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

³ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁴ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

disability. In the absence of probative medical evidence, the Board finds that appellant has not established a period of disability for the accepted injury.

In his July 24, 1996 report, Dr. Weaver diagnosed acute post-traumatic anxiety, acute post-traumatic cerebral syndrome and acute cervical sprain and strain injury. At an April 10, 1997 hearing before an Office hearing representative, he noted that appellant had a history of migraine headaches and opined that the employment incident had exacerbated her migraine headaches. In a report dated May 22, 1997, Dr. Weaver opined that appellant's ongoing problems were secondary to her work injury, without providing further explanation. By report dated April 9, 2001, he diagnosed depression and severe headaches, stating that since the employment injury appellant's condition had progressively deteriorated. Dr. Weaver opined that the work injury had exacerbated appellant's preexisting condition; he also opined that appellant's depression was causally related to her work injury and her work environment.

The evidence from Dr. Weaver does not provide a reasoned medical opinion on causal relationship between the employment injury and any of the diagnosed conditions. The reports and testimony of Dr. Weaver do not clearly explain how the May 24, 1996 employment injury aggravated a preexisting condition or contributed to depression, acute post-traumatic anxiety, acute post-traumatic cerebral syndrome or a cervical injury. With respect to aggravation of preexisting migraine headaches, there is no clear explanation as to the nature and extent of the aggravation caused by the May 24, 1996 employment injury. In his April 9, 2001 report, Dr. Weaver appears to opine that appellant's depression transformed the episodic migraine headaches into a pattern of daily severe headaches. The diagnosis of depression, as well as anxiety disorder, was provided by Dr. Olujimi Bamgbose, a clinical psychologist, in testimony at a March 29, 1999 hearing before an Office hearing representative. He stated that appellant's symptoms appeared to start after the work injury, but that does not constitute medical rationale on causal relationship. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury but symptomatic after it is not sufficient, without supporting rationale, to establish causal relationship.⁵ There is no reasoned medical opinion on causal relationship between an emotional condition and the employment injury.⁶

The August 4, 1997 report from the second opinion neurologist, Dr. DiJulio, provided a reasoned opinion that appellant did not have any additional employment-related conditions. He opined that appellant's continuing headaches were not causally related to the May 24, 1996 incident, noting that the blow to the head was minor and any symptoms should resolve within two weeks. Dr. DiJulio found no evidence to substantiate a cervical or other injury. He indicated that the headache condition had been exacerbated by emotional symptoms, but the headaches were not related to the employment incident.

⁵ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an injury is not sufficient to establish causal relationship without supporting rationale).

⁶ A claim for an emotional condition causally related to any other alleged employment factors is not before the Board.

The Board finds that the weight of the probative evidence does not establish any additional diagnosed conditions as causally related to the May 24, 1996 employment injury. Dr. DiJulio provided a reasoned opinion on the issue, while the evidence submitted by appellant is of diminished probative value on the issue of causal relationship.

The decisions of the Office of Workers' Compensation Programs dated July 17, 2001 and October 24, 2000 are modified to reflect that appellant sustained a minor head contusion with post-traumatic headaches and affirmed as modified.

Dated, Washington, DC
December 13, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member