

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MELISSA GRIFFIN and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

*Docket No. 01-1333; Submitted on the Record;
Issued January 3, 2002*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained a back condition in the performance of duty.

Appellant, a 35-year-old mail clerk, filed a claim for benefits on September 5, 2000, alleging that she developed a back condition caused or aggravated by factors of employment.

By letter dated December 1, 2000, the Office of Workers' Compensation Programs advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that she submit the additional evidence within 30 days. Appellant did not submit any additional evidence.

By decision dated January 26, 2001, the Office denied appellant's claim on the grounds that the claimed medical condition was not causally related to factors or incidents of employment.

The Board finds that appellant did not meet her burden of proof to establish that she sustained a back condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that 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

¹ 5 U.S.C. §§ 8101-8193.

for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

An award of compensation may not be based on surmise, conjecture or speculation. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁵ Neither the fact that the condition became apparent during a period of employment nor the belief that the condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁶ Causal relationship must be established by rationalized medical opinion evidence.

In the present case, appellant has not submitted a rationalized, probative medical opinion sufficient to demonstrate that her claimed condition was causally related to factors of her federal employment. The Office advised appellant of the type of evidence required to establish her claim; however, appellant failed to submit such evidence.⁷ Accordingly, as appellant failed to

² *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Id.*

⁵ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁶ *Id.*

⁷ On appeal, appellant has submitted new evidence. However, the Board cannot consider evidence that was not before the Office at the time of the final decision. *See Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35 (1952); 20 C.F.R. § 501(c)(1). Appellant may resubmit this evidence and legal contentions to the Office accompanied by a request for reconsideration pursuant to 5 U.S.C. § 8128(a). 20 C.F.R. § 501(c).

submit any probative medical evidence establishing that her claimed back condition was causally related to her employment, the Office properly denied appellant's claim for compensation.

The decision of the Office of Workers' Compensation Programs dated January 26, 2001 is hereby affirmed.

Dated, Washington, DC
January 3, 2002

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member