

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SHERRY C. MARSHALL and U.S. POSTAL SERVICE,
POST OFFICE, Dallastown, PA

*Docket No. 02-1248; Submitted on the Record;
Issued November 5, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty.

On November 1, 2001 appellant filed a claim alleging that on April 27, 2001 she lifted a heavy tray of mail.¹ She stated that she sustained injury to her neck, shoulders, arms, hands and legs.

By decision dated December 31, 2001, the Office of Workers' Compensation Programs denied the claim, finding that the medical evidence was insufficient to establish an injury causally related to the employment factor.

The Board finds that appellant did not meet her burden of proof in this case.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that he or she sustained an injury while in the performance of duty.³ 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

¹ In response to a request for additional information regarding the incident, appellant stated that it occurred on the last Saturday in April, which was April 28.

² 5 U.S.C. §§ 8101-8193.

³ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

employment incident caused a personal injury and generally this can be established only by medical evidence.⁴

The Office did not make specific findings with respect to the occurrence of an employment incident as alleged. Since the Office denied the claim based on the medical evidence, it is presumed that they have accepted an incident as alleged.

With respect to the medical evidence, appellant did not submit probative evidence on causal relationship between a diagnosed condition and the employment incident. In a form report (Form CA-20) dated December 5, 2001, Dr. Dale Kresge, an internist, checked a box “yes” that the condition found was caused or aggravated by employment activity. He does not provide any further explanation on causal relationship. The form report does not contain any history of an April 28, 2001 employment incident and the diagnosis is “cervical myelopathy? cause,” without further explanation.

The record does not contain medical evidence providing an accurate factual background and a reasoned medical opinion on causal relationship between a diagnosed condition and an employment incident.⁵ Accordingly, the Board finds that appellant did not meet her burden of proof in this case.

⁴ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁵ The Board reviews only evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated December 31, 2001 is affirmed.

Dated, Washington, DC
November 5, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

A. Peter Kanjorski
Alternate Member