

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORMAN C. GALLO, SR. and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, LA

*Docket No. 02-1856; Submitted on the Record;
Issued November 18, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on February 12, 2002.

On February 12, 2002 appellant, then a 47-year-old distribution clerk, filed a claim alleging that he sustained neck pain and swelling of his right arm and hand at work on that date. Appellant stated that he was sweeping cases when he turned his neck to the right and felt a pain in his neck, which radiated into his right arm and hand. He stopped work on February 12, 2002 and returned to limited-duty work on February 16, 2002. By decision dated April 11, 2002, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty on February 12, 2002. By decision dated May 31, 2002, the Office affirmed its April 11, 2002 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on February 12, 2002.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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

¹ 5 U.S.C. §§ 8101-8193.

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

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 he 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 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

Appellant did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty on February 12, 2002.

Appellant submitted a February 12, 2002 form report, in which Dr. Charles Sea, an attending physician Board-certified in emergency medicine, indicated that he treated appellant on that date. Dr. Sea noted that appellant reported the history of injury as “twisted neck and developed pain.” He diagnosed cervical strain and checked a “yes” box indicating that the condition was caused or aggravated by the described work activity. The submission of this report would not establish appellant’s claim as it does not provide any indication of the date of injury or any notable description of the implicated employment incident. Moreover, although Dr. Sea checked a “yes” box suggesting a causal relationship to a work activity, the Board has held that when a physician’s opinion on causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish causal relationship.⁷ Dr. Sea did not provide any medical rationale in support of his opinion.⁸

In a report dated March 5, 2002, Dr. Donald C. Faust, an attending Board-certified orthopedic surgeon, indicated that appellant reported having problems with his neck and right arm after surgery in December 2000. In the diagnosis portion of the report, Dr. Faust stated, “This patient continues with problems with the neck and shoulder.” He did not, however, provide any opinion that appellant’s condition was due to the February 12, 2002 employment

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).

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 *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

⁸ In another form report dated February 12, 2002, Dr. Sea diagnosed cervical strain and noted that appellant reported pulling mail and feeling pain after turning his head. However, Dr. Sea did not provide any date of injury or opinion on causal relationship.

incident.⁹ In a form report dated March 5, 2002, Dr. Faust listed the date of injury as February 12, 2002 and the history of injury as “neck and right arm swelling.” He diagnosed neck and shoulder strains. Although he listed the date of injury in this report, Dr. Faust did not provide any description of the February 12, 2002 employment incident or provide an opinion on causal relationship.¹⁰

For these reasons, appellant did not establish that he sustained an injury in the performance of duty on February 12, 2002.

The May 31 and April 11, 2002 decisions of the Office of Workers’ Compensation Programs are hereby affirmed.

Dated, Washington, DC
November 18, 2002

Michael J. Walsh
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁹ 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).

¹⁰ In a note dated March 11, 2002, Dr. Faust indicated that appellant missed work on March 6, 7 and 11, 2002, due to neck problems. In report dated May 15, 2002, Dr. Faust stated that appellant reported he was taking mail out of containers on February 12, 2002 when he turned his head and felt pain in his neck. Dr. Faust indicated that appellant continued to have neck and right arm problems. Dr. Faust again failed to provide any opinion on causal relationship in these reports.