

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ALICE F. MOONEY and U.S. POSTAL SERVICE,  
POST OFFICE, Rocky Mount, NC

*Docket No. 02-1246; Submitted on the Record;  
Issued October 18, 2002*

---

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty on July 19, 1998.

On March 19, 2000 appellant, then a 49-year-old clerk, filed a claim alleging that she sustained a shoulder injury in the performance of duty on July 19, 1998. In a narrative statement, she noted that she had a prior claim for carpal tunnel syndrome. Appellant stated that she was sorting mail and reached up to sort a letter when she felt a painful pop between her shoulders. She stated that she told her supervisors of the incident at that time.

By decision dated June 12, 2000, the Office of Workers' Compensation Programs denied the claim for an injury on July 19, 1998. In a decision dated August 3, 2001, an Office hearing representative affirmed the prior decision. By decision dated January 4, 2002, the Office reviewed the case on its merits and denied modification.

The Board finds that appellant has not established an injury in the performance of duty on July 19, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>2</sup> 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

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *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.<sup>3</sup>

The Office's findings with respect to the occurrence of an incident as alleged are not entirely clear from the record. The June 12, 2000 decision refers only to the lack of medical evidence, while the hearing representative noted inconsistencies such as late notification of injury, as well as lack of probative medical evidence. The Board notes that appellant has alleged she was sorting mail on July 19, 1998 and has stated that she notified her supervisors of an employment incident at that time. There is no evidence from the employing establishment directly contradicting appellant's statement. The Board notes that an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>4</sup> Given the weight accorded to appellant's statement, the evidence of record does support an employment incident on July 19, 1998.

The deficiency of the claim is the lack of any medical evidence providing an accurate history of the employment incident and an opinion on causal relationship with a diagnosed shoulder condition. In a treatment note dated July 21, 1998, Dr. J. Th. Bloem, an orthopedic surgeon, noted that appellant reported right shoulder pain, but the only incident he noted was a swimming pool incident over the weekend. The record does not contain any report from Dr. Bloem with an accurate history of a July 19, 1998 employment incident and an opinion on causal relationship with a diagnosed condition. His report of June 18, 2001 is not well rationalized with regard to addressing appellant's continuing back and shoulder symptoms. Dr. Bloem's report is not specific to the traumatic incident of July 19, 1998. Rather, he addresses appellant's carpal tunnel and back symptoms as related to her job duties in general.

The Board notes that the record contains a May 14, 2001 report from Dr. Mark Jensen, a chiropractor, diagnosing subluxations based on x-rays. Dr. Jensen stated that the subluxations were "consistent with how [appellant] was injured while she was on the job. Especially since that is when her symptoms began following that incident." Appellant has not alleged a back injury with this claim and it is not clear whether Dr. Jensen is referring to a July 19, 1998 incident, as no history is provided. His report is of little probative value to the issue presented in this case.

It is appellant's burden of proof to submit medical evidence sufficient to establish her claim of an injury causally related to a July 19, 1998 incident. The Board finds she has not met her burden in this case.

---

<sup>3</sup> See *John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>4</sup> *Thelma Rogers*, 42 ECAB 866 (1991).

The decisions of the Office of Workers' Compensation Programs dated January 4, 2002 and August 3, 2001 are affirmed, as modified.

Dated, Washington, DC  
October 18, 2002

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member