

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MYSTIE A. O'DONNELL and U.S. POSTAL SERVICE,
POST OFFICE, Gillette, WY

*Docket No. 03-412; Submitted on the Record;
Issued April 4, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met her burden of proof in establishing that her neck pain was caused by federal employment factors.

On October 2, 2001 appellant, then a 25-year-old letter carrier, filed a notice of occupational disease alleging that beginning September 12, 2001 she had "neck pain" as a result of her federal employment. She indicated that she injured her neck in January 1998 and had been "feeling a lot of pain in the same areas." Appellant stopped work on September 15, 2001 and returned to work on September 25, 2001.

By letter dated May 28, 2002, the Office of Workers' Compensation Programs requested detailed factual and medical evidence, stating that the information submitted was insufficient to establish a work-related injury on or after September 12, 2001. The Office afforded appellant 30 days to submit the requested information.

By decision dated August 15, 2002, the Office denied appellant's claim for compensation on the grounds that she did not establish fact of injury.

The Board finds that appellant did not meet her burden of proof to establish that her neck pain was caused by factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing 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 for which compensation is claimed are causally related to the employment injury.² These are the

¹ 5 U.S.C. §§ 8101-8193.

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

essential elements of each 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 evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.⁴

In the instant case, appellant did not submit any evidence to meet the three requirements to establish that she sustained an injury in the performance of duty. Appellant did not submit any medical evidence to establish a diagnosis concerning her neck pain. She also did not submit a factual statement identifying the employment factors, which allegedly caused or contributed to her condition, nor did she submit any medical evidence establishing that federal employment factors were the proximate cause of her condition. The Office notified appellant on May 28, 2002 that the materials submitted were not sufficient to determine whether she was eligible for benefits under the Act and afforded her 30 days to submit additional evidence. Appellant did not submit any additional evidence. At the time the Office denied appellant's claim on August 15, 2002, the record did not contain any factual or medical evidence to support her claim for compensation.

In the case of *Jacqueline Holiday*,⁵ appellant filed a claim for compensation alleging that her carpal tunnel syndrome was caused by her federal employment. Even though in *Holiday* appellant submitted a factual statement attributing her condition to employment factors, she did not submit any medical evidence establishing a diagnosis or relating her condition to employment factors. At the time of the Office's denial of her occupational disease claim, the record did not contain any medical evidence. In this case, the record also does not contain any medical evidence. As in *Holiday*, the Board finds that appellant has failed to establish a *prima facie* claim for compensation.⁶

Appellant alleges on appeal that she did not receive the Office's May 28, 2002 letter requesting additional information. The record indicates that the Office mailed the May 28, 2002 letter to appellant's current address of record. There is no evidence of record indicating that

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *Haydee Martinez*, Docket No. 01-833 (issued October 29, 2001).

⁵ *Jacqueline Holiday*, Docket No. 01-355 (issued August 2, 2001).

⁶ *Richard A. Weiss*, 47 ECAB 182 (1995).

appellant informed the Office that her address had changed. It is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual.⁷ This presumption arises when the record shows that the notice was properly addressed and duly mailed.⁸ The appearance of a properly addressed copy in the case record, together with the mailing custom or practice of the Office itself, will raise the presumption that the original was received by the addressee.⁹ The record in this case contains no evidence and appellant has proffered none that would rebut the presumption.

Therefore, since appellant did not submit any factual information identifying employment factors which allegedly caused or contributed to her condition or medical evidence identifying a diagnosis and relating her condition to employment factors, the Board finds that appellant did not meet her burden of proof and the Office properly denied her claim.

The decision of the Office of Workers' Compensation Programs dated August 15, 2002 is hereby affirmed.

Dated, Washington, DC
April 4, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁷ *George F. Gidicsin*, 36 ECAB 175 (1984) (when the Office sends a letter of notice to a claimant, it must be presumed, absent any other evidence, that the claimant received the notice).

⁸ *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

⁹ *See Larry L. Hill*, 42 ECAB 596 (1991). *See generally* Annotation, *Proof of Mailing by Evidence of Business or Office Custom*, 45 A.L.R. 4th 476, 481 (1986).