

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of NANCY R. SCHENK and DEPARTMENT OF HEALTH & HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION, Evansville, IN

*Docket No. 03-682; Submitted on the Record;  
Issued April 10, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On August 1, 2002 appellant, then a 49-year-old senior case technician, filed a traumatic injury claim alleging that on that date her shoe got caught in a warped/bent chair mat in a cubicle causing her to fall and hit her chest and left arm on the computer table. Appellant stated that she sustained a sore/bruise of her left arm and leg, and right leg and foot. She further stated that she experienced extreme pain in the sternum with chest pain and soreness. Appellant stopped work on August 2, 2002 and she returned to work on August 12, 2002.

In support of her claim, appellant submitted a Form CA-16, authorization for examination or treatment, dated August 1, 2002, from Dr. Rick Crawford, a Board-certified family practitioner, which reiterated the history of injury that her shoe got caught in the plastic floor mat and she fell against a computer table. Appellant also submitted several disability certificates from Dr. Crawford. His August 1, 2002 disability certificate indicated that appellant could not work due to a chest wall injury. His August 5, 2002 disability certificate provided that appellant could not work due to rib pain. In his August 7, 2002 disability certificate, Dr. Crawford stated that appellant could not work due to an illness.

Further, appellant submitted an August 23, 2002 report from Dr. Reynaldo Gonzalez, a radiologist, revealing the results of a bone scan. Dr. Gonzalez found abnormal areas of increased uptake involving the fourth and fifth right ribs and third, fourth and fifth left ribs. He also found abnormal increased uptake involving the sternum. Dr. Gonzalez stated that the distribution of these findings was consistent with trauma to the chest. He recommended correlation with plain films.

By letter dated October 10, 2002, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office

requested that appellant submit additional medical evidence supportive of her claim within 30 days.

In response, appellant submitted radiological reports from Dr. Gonzalez. His August 1, 2002 report revealed no obvious depressed sternal fracture, his chest x-ray report of the same date revealed no evidence of infiltrate and another x-ray report of the same date demonstrated no evidence of obvious rib fracture. His August 9, 2002 chest x-ray report indicated no active disease and his August 20, 2002 echocardiogram report revealed normal results.

Appellant also submitted Dr. Crawford's treatment notes covering the period August 1 through 16, 2002 revealing that she suffered from chest wall pain. Appellant resubmitted Dr. Gonzalez's August 23, 2002 bone scan report.

By decision dated November 13, 2002, the Office found the evidence of record sufficient to establish that appellant actually experienced the claimed accident, but insufficient to establish that she sustained a condition caused by this incident. Accordingly, the Office denied appellant's claim for compensation.<sup>1</sup>

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>3</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 employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>4</sup>

In this case, the Office accepted that the August 1, 2002 incident occurred as alleged. The Office, however, found the medical evidence of record insufficient to establish a causal relationship between a diagnosed condition and the incident. Dr. Crawford's August 1, 5 and 7, 2002 disability certificates indicating that appellant could not work due to a chest wall injury, rib pain and an illness are insufficient to establish appellant's burden because they failed to provide

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<sup>1</sup> Subsequent to the Office's November 13, 2002 decision, the Office received additional evidence. Further, appellant submitted new evidence with her appeal. The Board, however, 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. § 501.2(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. § 501.2(c).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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

<sup>4</sup> See *John J. Carlone*, 41 ECAB 354, 357 (1989).

a specific diagnosis and to discuss whether or how the diagnosed condition was caused by the August 1, 2002 employment incident.<sup>5</sup>

Dr. Gonzalez's August 23, 2002 bone scan report diagnosing rib and sternum conditions is insufficient to establish appellant's burden because it failed to discuss how or why appellant's conditions were caused by the August 1, 2002 incident. Further, his August 1, 9 and 20, 2002 radiological reports provided normal test results.

Lastly, while Dr. Gonzalez's treatment notes indicated that appellant suffered from chest wall pain, he provided no definitive diagnosis regarding appellant's chest and he did not attribute the cause of appellant's symptoms to the August 1, 2002 employment incident.

The Office advised appellant of the type of medical evidence required to establish her claim; however, she failed to submit such evidence. Appellant did not provide a rationalized medical opinion to describe or explain how the August 1, 2002 employment-related fall caused the claimed injury. As appellant has failed to submit any probative medical evidence establishing that she sustained an injury in the performance of duty, the Office properly denied her claim for compensation.

The November 13, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
April 10, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Daniel Deparini*, 44 ECAB 657, 659 (1993).