U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRACEY P. SPILLANE and U.S. POSTAL SERVICE,
POST OFFICE, Midflorida, FL

Docket No. 02-2190; Submitted on the Record;
Issued June 12, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on October 13, 2001.

On October 20, 2001 appellant, then a 26-year-old mail carrier, filed a traumatic injury claim alleging that she sustained an allergic reaction at work on October 13, 2001. She claimed that the injury occurred when she was "putting up mail [and her] face and eyes started burning and [her] eyes went blurry." Appellant stopped work on October 13, 2001 and received medical care on that date.[1] A supervisor indicated that appellant complained of symptoms after handling magazines. During a conference on November 7, 2001 with an Office claims examiner, appellant stated that, after taking magazines out of plastic wrap, she developed burning in her eyes, face and hands. She indicated that she was uncertain whether her reaction was from powder or perfume from the magazines. Appellant noted that she first wore latex gloves at work on October 13, 2001, but that she had worn such gloves before and after that date without incident. She indicated that an anthrax test was performed without her asking for such a test.

By decision dated January 7, 2002, the Office denied appellant's claim that she sustained an injury in the performance of duty on October 13, 2001. The Office found that appellant had not clearly identified any work factor which could have caused her claimed injury and did not submit medical evidence relating her condition to an identifiable work factor. Appellant requested a review of the written record by an Office hearing representative. By decision dated and finalized July 15, 2002, the Office hearing representative affirmed the Office's January 7, 2002 decision.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on October 13, 2001.

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[1] As part of her medical care, appellant was given a test for anthrax. The results from appellant's October 13, 2001 testing were received on October 15, 2001 and revealed negative findings.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of 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.[3] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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 she actually experienced the employment incident at the time, place and in the manner alleged.[5] Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[6] The term "injury" as defined by the Act, refers to a disease proximately caused by the employment.[7]

In the present case, appellant filed a claim alleging that she sustained an allergic reaction at work on October 13, 2001. However, appellant has not established the factual aspect of her claim. She has not submitted sufficient evidence to establish that she actually experienced an employment incident at a given time and place and in a given manner. She has not clearly identified the aspect of her employment which she believed caused her to suffer the claimed condition on October 13, 2001. Appellant made vague references to possibly having a reaction to magazines or latex gloves, but she did not adequately specify the employment factors which she felt caused her need for medical treatment on October 13, 2001, nor did she clearly specify such details as the extent and duration of exposure to any given employment factors. The Office provided appellant with several opportunities to clarify her claim, but she failed to adequately do so.

An examination of the medical evidence does not reveal any further clarification of the factual deficiencies of appellant's claim. These reports do not indicate that appellant clearly

[2] 5 U.S.C. §§ 8101-8193.

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

[5] *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).

[6] *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).

[7] 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(q), (ee).

reported to her attending physicians that she felt her claimed condition was due to a specific and identifiable employment factor or factors.[8]

Appellant submitted an October 13, 2001 report in which Dr. Ed Schlein, an attending Board-certified internist, stated that appellant reported experiencing a burning sensation in her face and eyes after handling mail. Dr. Schlein noted that appellant reported having a sinus infection for which she took Zithromax and Claritin. He indicated that appellant exhibited a red and congested pharynx and had thick mucus from the posterior nasopharynx. Dr. Schlein diagnosed "sinusitis, partially treated" and "possible dermatitis, probably to latex, unknown etiology."

In a form report dated October 13, 2001, Dr. Larry Johnson, an attending Board-certified family practitioner specializing in emergency medicine, stated that appellant reported the cause of injury as "putting up mail, eyes and face started burning." Dr. Johnson provided a diagnosis of "sinusitis, dermatitis" due to the reported injury. The record also contains a Form CA-16 in which Dr. Johnson noted that appellant reported the nature of the injury as "face and eyes burning." Dr. Johnson diagnosed "sinusitis, dermatitis, etiology unknown," but also checked a box indicating that the condition was caused or aggravated by the reported incident.[9] In a form report dated October 15, 2001, a physician with an illegible signature noted that appellant reported the cause of injury as "putting up mail, eyes and face started burning." The physician diagnosed "contact dermatitis, allergy" due to the reported injury.

In a report dated November 14, 2001, Dr. Jeffrey Robinson, an attending Board-certified family practitioner, noted that appellant reported being exposed to "some sort of chemical allergen" at work. He indicated that the examination was unremarkable except for some slight erythema of the cheeks and diagnosed "apparent chemical allergen exposure, etiology uncertain." Dr. Robinson indicated that nothing significant had been found on his prior examination and stated that appellant had recovered from the reported incident. He noted that appellant had started taking Zithromax for sinusitis prior to the incident and stated:

> "Her allergy symptoms waned during that time rather than worsening, as if it could have been a Zithromax allergy. She does seem to get sick in the fall and spring regularly and is under the care of her regular doctor for that. She has not had any allergy testing. She has been back to work now and seems to do fine without difficulties. She had used latex gloves at the time of the incident but has used them before that time without any prior allergies."

[8] Moreover, the reports suggest that appellant's condition might be attributable to a preexisting nonwork-related sinus condition.

[9] Where an employing establishment properly executes a Form CA-16 which authorizes medical treatment of a medical examination as a result of an employee's claim of sustaining an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Elaine K. Kreymborg*, 41 ECAB 256, 259 (1989); *Pamela A. Harmon*, 37 ECAB 263, 264-65 (1986). However, it does not appear that the employing establishment properly executed the Form CA-16 as it seems that Dr. Johnson filled out the entire form, including the portion designed for employing establishment approval.

Given that appellant did not establish the factual aspect of her claim, it is not necessary to discuss the probative value of these medical reports. For above-described reasons, appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on October 13, 2001.

The July 15 and January 7, 2002 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
June 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member