

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ELLINGTON KHOO and U.S. POSTAL SERVICE,  
POST OFFICE, San Francisco, CA

*Docket No. 02-2213; Submitted on the Record;  
Issued March 17, 2003*

---

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an injury in the performance of duty on December 18, 2001.

On December 19, 2001 appellant, then a 44-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1). Appellant alleged that on December 18, 2001 he was casing mail when he experience pain and numbness in his left shoulder, ribs, hand and back. The reverse of the claim form indicated that appellant did not stop working. In a duty status report (Form CA-17) dated January 15, 2002, Dr. Clint Potter diagnosed left trapezius strain and provided work restrictions.

In a letter dated June 7, 2002, the Office of Workers' Compensation Programs indicated that, while the case had been administratively handled to allow limited medical payments, no consideration of the merits of the claim had been made. The Office requested that appellant submit a narrative medical report on causal relationship between a diagnosed condition and the federal employment activity.

By decision dated July 16, 2002, the Office denied the claim on the grounds that the medical evidence was insufficient to establish causal relationship between a diagnosed condition and federal employment.

The Board finds that appellant has not met his burden of proof in this case.

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,

---

<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.

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>3</sup>

The Office has apparently accepted that an incident occurred as alleged on December 18, 2001. The record, however, does not contain a medical report sufficient to establish causal relationship between the employment activity and a diagnosed injury. The Board has held that medical evidence must be in the form of a reasoned opinion by a qualified physician based on a complete and accurate factual and medical history.<sup>4</sup> In his January 15, 2002 report, Dr. Potter diagnosed a left trapezius strain, but he did not provide a history of the employment incident, or an opinion on causal relationship with employment. The medical evidence submitted prior to the July 16, 2002 decision, consists of form reports that do not provide a history of employment activity on December 18, 2001 or a reasoned opinion on causal relationship between a diagnosed condition and employment.<sup>5</sup> In the absence of probative medical evidence on the issue presented, the Board finds that appellant did not meet his burden of proof in this case.

The Board notes that appellant filed his appeal in this case August 28, 2002. On October 15, 2002 the Office issued a decision with respect to a request for a review of the written record. It is well established that the Board and the Office may not have concurrent jurisdiction over the same case and those Office decisions, which change the status of the decision on appeal are null and void.<sup>6</sup> The Board finds that the October 15, 2002 decision, is null and void.

---

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

<sup>4</sup> *Robert J. Krstyen*, 44 ECAB 227, 229 (1992).

<sup>5</sup> The record contains evidence submitted after the July 16, 2002 decision; the Board’s review of evidence on this appeal is limited to evidence that was before the Office at the time of the July 16, 2002 decision. 20 C.F.R. § 501.2(c).

<sup>6</sup> *Douglas E. Billings*, 41 ECAB 880, 895 (1990).

The July 16, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 17, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member