

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBIN MURRAY and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 03-369; Submitted on the Record;
Issued March 12, 2003*

DECISION and ORDER

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

The issue is whether appellant has met her burden of proof in establishing that she sustained a left shoulder condition in the performance of duty.

On September 13, 2002 appellant, then a 39-year-old clerk, filed a traumatic injury claim and asserted that, on September 9, 2002, while picking up heavy boxes, she injured her left shoulder. Appellant received medical treatment on September 12, 2002 and was off work from September 14 through 20, 2002.

In support of the claim, appellant submitted a medical note from Dr. Robert Commito, a Board-certified internist, dated September 12, 2002, in which he referred appellant to another physician for a "sprain shoulder." In a separate note, Dr. Commito indicated that appellant was disabled from work from September 13 through 19, 2002 related to a "strain shoulder."

In a letter dated September 25, 2002, the Office of Workers' Compensation Programs requested that appellant submit additional medical evidence containing a diagnosis of a condition resulting from the claimed injury and a physician's opinion as to how the injury resulted in the diagnosed condition. The Office afforded appellant 30 days to submit the requested information; however, additional evidence was not received.

In a decision dated November 1, 2002, the Office denied appellant's claim. The Office found that, although the evidence of file supported that appellant actually experienced the claimed event, the evidence did not establish that a condition had been diagnosed in connection with it.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on September 9, 2002.

In order to determine whether an employee sustained a traumatic 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 that 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.¹ The second component is whether the employment incident caused a personal injury.²

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that the condition was caused, precipitated or aggravated by her employment is sufficient to establish a causal relationship.³ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁴ A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant.⁵ Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors.⁶

In the instant case, appellant failed to meet her burden of demonstrating that her claimed left shoulder condition was caused by the September 9, 2002 employment incident. The record indicates that appellant received medical treatment on September 12, 2002. The examining physician, Dr. Commito, simply referred appellant to another physician for what he reported was a strained shoulder and indicated that appellant was disabled from work from September 13 through 20, 2002. However, he did not specifically address whether appellant's shoulder strain resulted from the claimed injury. Accordingly, the medical evidence in this case is insufficient to establish appellant's traumatic injury claim. By letter dated September 25, 2002, the Office advised appellant of the type of evidence needed to establish her claim; however, no further evidence was submitted within the requested timeframe.⁷

As the record is devoid of any rationalized medical evidence demonstrating a causal relationship between the claimed left shoulder condition and the September 9, 2002 employment incident, the Office properly denied compensation.

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *John J. Carlone*, 41 ECAB 354 (1989).

³ *Robert G. Morris*, 48 ECAB 238, 239 (1996).

⁴ *Id.*

⁵ *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Id.*

⁷ With her appeal appellant submitted additional evidence. However, the Board may not consider new evidence on appeal; see 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and requesting reconsideration pursuant to 5 U.S.C. § 8128(a).

The decision of the Office of Workers' Compensation Programs dated November 1, 2002 is affirmed.

Dated, Washington, DC
March 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member