

**United States Department of Labor
Employees' Compensation Appeals Board**

ELSIE KELLY, Appellant

and

**U.S. POSTAL SERVICE, LAKEVIEW POST
OFFICE, Chicago, IL, Employer**

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**Docket No. 04-891
Issued: August 25, 2005**

Appearances:
Elsie Kelly, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On February 23, 2004 appellant timely appealed from a March 20, 2003 decision by the Office of Workers' Compensation Programs which found that she had not established that she sustained an employment injury on January 30, 2003. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a back injury in the performance of duty on January 30, 2003, as alleged.

FACTUAL HISTORY

On January 30, 2003 appellant, then a 47-year-old city carrier was using a handrail to descend a set of steps when the handrail became loose, causing her to fall and sit on the steps. She stated that she had pain in her back and both thighs.

In a February 10, 2003 letter, the Office informed appellant that the evidence she submitted did not support her claim because no diagnosis of any condition arising from the January 30, 2003 injury had been submitted. The Office informed appellant that she needed to submit a medical report from her physician who was required to indicate whether any diagnosed condition was related to her claimed injury and to explain how it was related to the injury. The Office indicated that the case would be held open for 30 days for appellant to submit the information. Appellant did not respond.

In a March 20, 2003 decision, the Office accepted that the claimed event had occurred. The Office, however, denied appellant's claim because she had not submitted any medical evidence that demonstrated that she sustained a condition which could be connected to the event.¹

LEGAL PRECEDENT

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.³ A claimant seeking benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing by reliable, probative, and substantial evidence that any disability for work or specific condition for which compensation is claimed is causally related to the employment injury.⁵ To establish causal relationship between a condition, including any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶ Neither the fact that the condition manifests itself during a period of federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.⁷

¹ Appellant subsequently submitted additional evidence. However, the Board can only consider the evidence that was before the Office at the time it made its final decision. 20 C.F.R. § 501.2(c). The Board therefore cannot consider any evidence submitted by appellant after the Office's March 20, 2003 decision. To have such evidence considered by the Office, appellant must submit a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b).

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

³ *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(d).

⁴ 5 U.S.C. § 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Daniel M. Ibarra*, 48 ECAB 218, 219 (1996).

⁷ 20 C.F.R. § 10.115(e).

ANALYSIS

Appellant submitted a claim for a back injury which she claimed was related to the fall she sustained on January 30, 2003. The Office accepted that the incident occurred at the time, place and in the manner alleged. The Office informed appellant of the necessity of submitting medical evidence which contained a diagnosis and an explanation on how any diagnosed condition was causally related to the employment injury. Appellant failed to submit such medical evidence within the time granted her by the Office. She has not met her burden of proof in establishing a *prima facie* claim that her back condition was causally related to the January 30, 2003 employment incident.⁸

CONCLUSION

The Board finds that appellant had not met her burden of proof in submitting medical evidence to establish that she sustained a back injury in the performance of duty on January 30, 2003, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs, dated March 20, 2003, be affirmed.

Issued: August 25, 2005
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁸ See *Calvin E. King*, 51 ECAB 394 (2000).