

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

ELIZABETH A. HULBERT, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Olympia, WA, Employer**

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**Docket No. 04-544
Issued: May 26, 2004**

Appearances:
Elizabeth A. Hulbert, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On December 22, 2003 appellant filed a timely appeal of the Office of Workers' Compensation Programs' decision dated October 7, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues on appeal are: (1) whether appellant sustained an injury in the performance of duty as alleged; and (2) whether the Office properly denied reimbursement of medical expenses.

FACTUAL HISTORY

On August 22, 2003 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim alleging that on June 30, 2003 she was exposed to exhaust fumes from her postal vehicle which caused nausea and burning of her nasal passages and eyes. Appellant did not stop working.

Along with the claim, the Office received laboratory reports which indicate that appellant submitted to blood tests on June 30, 2003 at her local hospital after reporting nausea from work-

related exhaust exposure. In two reports dated June 30, 2003, Dr. William Hurley, a Board-certified physician in emergency medicine indicated that appellant complained of nausea, shortness of breath and tingly lips after a leak on her work vehicle exposed her to exhaust fumes for approximately an hour that day. Dr. Hurley concluded that appellant's exhaust fume exposure caused her no carbon monoxide toxicity and recommended that appellant avoid further exhaust exposure and drive another postal vehicle while at work. In a separate June 30, 2003 form report completed for the insurance company, Dr. Hurley indicated that appellant was sick from exhaust fumes and diagnosed irritant exposure. The physician checked "yes" on the form report that the condition was caused or aggravated by employment or the history of injury provided.

In a letter dated September 3, 2003, the Office advised appellant that simple exposure to a workplace hazard does not constitute a work-related condition entitling an employee to medical treatment. The Office requested additional information from appellant within 30 days, specifically a medical report from her physician providing a diagnosis of injury connected to the traumatic injury claim. No further evidence was submitted.

By decision dated October 7, 2003, the Office denied the claim finding that it did not meet the guidelines for establishing that she sustained an injury as defined by the Federal Employees Compensation Act.¹ The Office accepted that the claimed events occurred but found that there was no medical evidence that provided a diagnosis which could be connected to the events. The Office stated that medical treatment at the Office's expense was not authorized and prior authorization, if any, was terminated.

On appeal, appellant alleged that her supervisor directed her to go to the hospital on the day of the alleged exposure where she had her blood work done. Appellant contends that she should be reimbursed for her medical expenses on June 30, 2003.

LEGAL PRECEDENT -- ISSUE 1

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

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

¹ 5 U.S.C. § 8107 *et seq.*

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

employment incident at the time, place and in the manner alleged.⁴ 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.⁵ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.⁶

LEGAL PRECEDENT -- ISSUE 2

Section 8103(a) of the Act provides for the furnishing of “services, appliances and supplies prescribed or recommended by a qualified physician” which the Office, under authority delegated by the Secretary, “considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation.”⁷ In interpreting section 8103(a), the Board has recognized that the Office has broad discretion in approving services provided under the Act to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time.⁸ The Office has administrative discretion in choosing the means to achieve this goal and the only limitation on the Office’s authority is that of reasonableness.⁹

While the Office is obligated to pay for treatment of employment-related conditions, appellant has the burden of establishing that the expenditure is incurred for treatment of the effects of an employment-related injury or condition. To be entitled to reimbursement of medical expenses by the Office, appellant must establish a causal relationship between the expenditure and the treatment by submitting rationalized medical evidence supporting such a connection and demonstrating that the treatment is necessary and reasonable.¹⁰

ANALYSIS -- ISSUE 1

In this case, appellant did not submit sufficient medical evidence to establish that she sustained a condition compensable under the Act as a result of her federal employment duties on June 30, 2003. The medical evidence of record here consists of three hospital reports from Dr. William Hurley, an emergency medicine specialist, which, outline appellant’s complaints of nausea related to the accepted exhaust exposure at work. In the first two reports, Dr. Hurley found that appellant’s exposure did not cause a diagnosed condition, and he specifically ruled out

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.*

⁶ As used in the Act, the term “disability” means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *Frazier V. Nichol*, 37 ECAB 528 (1986).

⁷ 5 U.S.C. § 8103(a).

⁸ *Dale E. Jones*, 48 ECAB 648, 649 (1997).

⁹ *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹⁰ *Dale E. Jones*, *supra* note 8.

carbon monoxide toxicity. In the third report completed for insurance purposes, Dr. Hurley diagnosed irritant exposure and indicated by checking “yes” that the condition was caused or aggravated by employment or the history of injury provided. However, when a physician’s opinion supporting causal relationship consists only of checking “yes” to a form question, that opinion has little probative value and is insufficient to establish a causal relationship.¹¹

The Office advised appellant of the deficiencies of her claim by letter dated September 3, 2003 and permitted her to submit the requisite evidence in order to establish the claim; however, no further information was received. Consequently, appellant has not established her claim as she has submitted no medical evidence supporting a diagnosis of injury related to her exposure to exhaust fumes at work on June 30, 2003.

ANALYSIS -- ISSUE 2

Appellant alleges on appeal that her supervisor instructed her to report to the hospital on June 30, 2003 for the claimed employment-related exposure, therefore she should be reimbursed for medical expenses. Ordinarily, when an employee sustains an alleged job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed CA-16 within four hours.¹² However, in cases of emergency or cases involving unusual circumstances the Office may, in the exercise of its discretion, authorize treatment other than by a Form CA-16.¹³

The record contains no Form CA-16 or other authorization from the Office that would create a contractual obligation for it to pay for the cost of appellant’s examination or treatment regardless of the action taken on her claim.¹⁴ Further, there is no evidence of a work-related injury in this case. Without a work-related injury and without a valid authorization for the medical service provided, there is no basis under the Act or its implementing regulations for the payment of expenses arising from appellant’s June 30, 2003 medical expenses.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty as alleged. The Board further finds that the Office properly denied reimbursement for appellant’s medical expenses on June 30, 2003.

¹¹ *Gary J. Watling*, 52 ECAB 278 (2001).

¹² 20 C.F.R. § 10.300.

¹³ 20 C.F.R. § 10.304.

¹⁴ *See* 20 C.F.R. § 10.300; *Frederick J. Williams*, 35 ECAB 805 (1984).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 7, 2003 is affirmed.

Issued: May 26, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member