U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK M. MOORE and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, Wash.

Docket No. 96-2118; Submitted on the Record;
Issued June 3, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established an injury in the performance of duty on February 29, 1996.

The Board has reviewed the record and finds that appellant has not established an injury in the performance of duty on February 29, 1996.

On February 29, 1996 appellant, then a 49-year-old mail handler, filed a claim alleging that on that day he sustained a back injury while removing a full tray of mail from a mail stand. In decisions dated April 22 and 30, 1996, the Office of Workers' Compensation Programs denied the claim on the grounds that the evidence was insufficient to establish fact of injury.

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, it must first be determined whether "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. 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.[1]

In the present case, the Office accepted that the employment incident occurred as alleged. The medical evidence of record, however, is not sufficient to establish an injury resulting from the incident. In a medical report dated February 29, 1996 Dr. Mary Maxwell-Young, Board-certified in emergency medicine, noted appellant's history of injury, stating that he alleged that he had injured his right shoulder while in the performance of duty that evening. Upon examination, Dr. Young stated that appellant had acute right shoulder pain and possible thoracic outlet syndrome versus cervical radiculopathy. In a medical report dated March 4, 1996 from a

[1] *Robert J. Krstyen*, 44 ECAB 227 (1992); *see also John J. Carlone*, 41 ECAB 354 (1989).

medical clinic, Dr. Clawson[2] diagnosed appellant with "severe nerve pinch." However in neither report is there an opinion offered as to a causal relationship between the diagnosed condition and the employment incident. Neither doctor provided an affirmative opinion on the issue of whether appellant sustained an injury causally related to the February 29, 1996 employment incident.

Medical reports that do not contain a reasoned opinion by a qualified physician that is based on an accurate factual and medical history are of diminished probative value and generally insufficient to meet appellant's burden of proof.[3] The Board finds that the medical evidence of record is not of sufficient probative value to establish an injury causally related to the February 29, 1996 employment incident and the Office properly denied the claim.

The April 30 and 10, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.[4]

Dated, Washington, D.C.
June 3, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[2] The signature as it appears in the record is unclear regarding Dr. Clawson's first name.

[3] *See Robert J. Krstyen, supra* note 1; *Arlonia B. Taylor*, 44 ECAB 591 (1993).

[4] The Board notes that appellant submitted additional evidence subsequent to the Office's April 10 and 30, 1996 decisions. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).