U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JENNIFER GENESEO and U.S. POSTAL SERVICE,
POST OFFICE, Wahoo, Nebr.

Docket No. 97-669; Submitted on the Record;
Issued November 4, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof to establish that she sustained a neck injury as a result of her federal employment duties.

On May 13, 1996 appellant, then a 36-year-old letter carrier, filed a claim for occupational disease alleging that she developed neck strain due to the configuration of the headrest in her postal vehicle, which she used to deliver the mail in the course of her federal employment.

In support of her claim, appellant submitted treatment notes from Terri Elliott, a physician's assistant with the Prague Clinic, documenting her condition and relating its cause to appellant's postal vehicle.

By letter dated June 12, 1996, the Office of Workers' Compensation Programs forwarded a statement of accepted facts and a list of questions to be answered to Dr. Brian K. Elliott, a Board-certified family practitioner associated with the Prague Clinic. The Office specifically requested that Dr. Elliott provide a detailed narrative medical report responding to the questions asked by the Office, with medical reasons for all answers given.

In response to the Office's letter, the Office received a letter dated June 24, 1996, signed by Terri Elliott, which attempted to provide the additional medical information requested. The physician's assistant specifically stated that in her medical opinion, prolonged exposure to an ill-fitting seat, compounded with the twisting motion needed to dispense the mail into the proper receptacles, had contributed to appellant's neck strain.

In a decision dated July 18, 1996, the Office rejected appellant's claim because appellant had failed to provide competent medical opinion evidence in support of her claim. The Office explained that a physician's assistant is not considered to be a physician under the provisions of

the Federal Employees' Compensation Act, and therefore, the reports submitted by Terri Elliott, have no probative value.

On August 3, 1996 appellant requested reconsideration of the Office's July 18, 1996 decision. In support of her request, appellant submitted a form from the Prague Clinic which stated that a physician's signature in the medical charts would be designated by the use of initials, and gave samples of the initials of each of the physicians in the clinic, including Dr. Brian Elliott. Appellant additionally submitted treatment notes from the clinic dated April 1, 15, 29, and May 3, 1996, which discuss appellant's diagnosed neck strain, its treatment, and its causal relationship to her employment duties. These treatment notes were not previously in the record and are initialed by both Terri Elliott and Dr. Brian Elliott. Finally, appellant submitted a letter from the office manager of the clinic, who stated that Dr. Brian Elliott consulted with Terri Elliott and reviewed the various medical charts on a daily basis.

By decision dated November 1, 1996, the Office denied appellant's request for reconsideration. In the accompanying memorandum, the Office found that the evidence submitted on reconsideration was insufficient to warrant merit review, as appellant had provided no medical opinion evidence from a physician that supported a medical connection between any condition and specific factors of her employment.

The Board finds that this case is not in posture for decision, and must be remanded for further development.

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 filed within the applicable time limitation 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."[1] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2]

In accordance with the Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of his duty, 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 or exposure which is alleged to have occurred.[3] In this case, the Office has accepted that appellant's duties include delivering mail from the postal vehicle.

[1] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[2] *Daniel J. Overfield*, 42 ECAB 718 (1991).

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (September 1980).

The second component is whether the employment incident or exposure caused a personal injury and generally can be established only by medical evidence.[4] To establish a causal relationship between the condition, as well as 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.[5]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant,[6] must be one of reasonable medical certainty,[7] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8] The fact that the condition became apparent during a period of employment is not sufficient to establish the causal relationship, which must be established in each case by affirmative medical evidence.[9]

In support of her claim, appellant initially submitted reports dated April 15, April 29, and May 3, 1996 from Terri Elliott, a physician's assistant. There is no indication in the record that Dr. Brian Elliott or another physician initialed or adopted these notes or reports. The Board notes that section 8101(2) of the Act[10] defines "physician" as; "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractor, and osteopathic practitioners ...." A physician's assistant is not a physician within the meaning of the Act.[11] Therefore, these reports signed by Terri Elliott do not constitute medical evidence and cannot meet appellant's burden of proof.

Appellant subsequently submitted, however, in support of her request for reconsideration, additional treatment notes dated April 1, 15, 29, and May 3, 1996, which discuss appellant's neck strain and state that the continuation of appellant's job, specifically driving a postal vehicle in which she cannot position herself comfortably, perpetuated and possibly aggravated, her neck strain. The Board finds that the clinic notes appellant submitted were initialed by Dr. Brian Elliott and, therefore, constituted medical evidence.

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[4] *Id*. at Chapter 2.803.2b.

[5] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[6] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[7] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[8] *See William E. Enright*, 31 ECAB 426, 430 (1980).

[9] *Paul D. Weiss*, 36 ECAB 720 (1985); *William J. Murray*, 35 ECAB 606 (1984); 20 C.F.R. § 10.110(a).

[10] 5 U.S.C. § 8101 *et seq*.

[11] *Curtis L. Lord*, 33 ECAB 1482, 1486 (1982).

The Board also finds that the Office must further develop the record regarding appellant's diagnosed neck strain.[12] While the treatment notes dated April 1, 15, 29, and May 3, 1996, initialed by Dr. Elliott do not contain a well-rationalized medical opinion, they do raise an uncontroverted inference that appellant's current neck condition may be related to current job requirements.[13] After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.[14]

The decisions of the Office of Workers' Compensation Programs dated November 1 and July 18, 1996 are set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
November 4, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member

[12] While appellant has the burden of establishing entitlement to compensation when the Office has undertaken the development of either factual or medical evidence, proceedings under the Act are not adversarial, and the Office has an obligation to see that justice is done. 20 C.F.R. § 10.110(b); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

[13] *See John J. Carlone*, 41 ECAB 354, 358 (1989) (finding that medical evidence submitted by appellant is sufficient, absent any opposing medical evidence, to require further development of the record).

[14] *See Raymond H. VanNett*, 44 ECAB 480, 483 (1993) (finding that the Office failed to complete evidentiary development in accord with its own procedures and Board precedent).