

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CYNTHIA K. CRAMER and U.S. POSTAL SERVICE,
POST OFFICE, Akron, OH

*Docket No. 98-1566; Submitted on the Record;
Issued December 9, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant met her burden of proof to establish that she sustained an arthritic right hip condition or fibromyalgia in the performance of duty.

The Board finds that the case is not in posture for decision in that the case is remanded to the Office of Workers' Compensation Programs for further development of the medical evidence regarding whether appellant sustained an arthritic right hip condition or fibromyalgia in the performance of duty.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of her claim.² The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.³ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence.⁴

In the present case, the Office accepted that appellant sustained an occupational injury in the form of a right hip strain due to the repetitive duties of her mail carrier position, including twisting, bending, reaching and lifting. Appellant later claimed that she also sustained an

¹ 5 U.S.C. §§ 8101-8193.

² *Ruthie Evans*, 41 ECAB 416, 423-24 (1990); *Donald R. Vanlehn*, 40 ECAB 1237, 1238 (1989).

³ *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁴ *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1983).

arthritic right hip condition and fibromyalgia due to her job. By decision dated April 4, 1997, the Office denied appellant's claim on the grounds that she did not submit sufficient medical evidence to establish that she sustained an arthritic right hip condition and fibromyalgia due to employment factors. By decision dated and finalized March 27, 1998, an Office hearing representative set aside the Office's April 4, 1997 decision and remanded the case to the Office for further development of the medical evidence regarding whether appellant sustained an employment-related arthritic right hip condition. The Office noted, without elaboration, that "the fibromyalgia condition continues to be denied and is not part of this review process" regarding whether appellant sustained an employment-related arthritic condition. Therefore, the Office ostensibly affirmed its April 4, 1997 decision with respect to the denial of appellant's claim that she sustained employment-related fibromyalgia.

The Board notes that, while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that appellant sustained an arthritic right hip condition and fibromyalgia in the performance of duty and are not contradicted by any substantial medical or factual evidence of record. While the reports are not sufficient to meet appellant's burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed arthritis and fibromyalgia conditions and employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.⁵ Therefore, the Office was correct in its March 27, 1998 decision when it determined that the medical evidence should be further developed regarding whether appellant sustained an employment-related arthritic right hip condition.⁶ For the above-noted reasons, the medical evidence should also be further developed regarding whether appellant sustained employment-related fibromyalgia.

In a report dated November 20, 1996, Dr. Gordon L. Bennett, an attending Board-certified orthopedic surgeon, suggested that appellant's employment aggravated her arthritic right hip condition. In a report dated December 17, 1996, Dr. Mark J. Pellegrino, an attending physician Board-certified in physical medicine and rehabilitation, stated, "It is my opinion that her right hip problems, *i.e.*, right hip strain and arthritis with acute exacerbation are related to her job as a mail carrier." He then described how the duties of appellant's job were responsible for appellant's condition and indicated that diagnostic testing supported his findings. In a report dated March 26, 1997, Dr. Pellegrino noted, "It is my opinion that the repetitive nature of her job involving lifting, bending, twisting and standing over time resulted in the development of her fibromyalgia syndrome with associated painful tender and trigger points. In a report dated May 21, 1997, Dr. Pellegrino indicated that appellant continued to be under his care for various employment-related conditions including arthritis and fibromyalgia.

Accordingly, the case will be remanded to the Office for further evidentiary development regarding the issue of whether appellant sustained an arthritic right hip condition or fibromyalgia in the performance of duty. The Office should prepare a statement of accepted facts and obtain a

⁵ See *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

⁶ It appears that appellant was referred for further medical evaluation in connection with the March 27, 1998 remand decision but it is unclear from the record whether the referral was actually carried out.

medical opinion on this matter. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.

The decision of the Office of Workers' Compensation Programs dated and finalized March 27, 1998 is affirmed with respect to the Office's remand of the case for further development regarding whether appellant sustained an arthritic right hip condition in the performance of duty. The decision of the Office dated and finalized March 27, 1998 is set aside with respect to the Office's denial of appellant's claim for employment-related fibromyalgia. The case is remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
December 9, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member