

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN L. CONTRERAS and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, Calif.

*Docket No. 97-2370; Submitted on the Record;
Issued May 13, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has established an injury in the performance of duty on November 27, 1996.

On November 30, 1996 appellant a letter carrier, filed a claim alleging that on November 27, 1996 he injured his back while lifting flats from a flat case. By decision dated April 3, 1997, the Office determined that appellant had not submitted sufficient factual and medical evidence to establish fact of injury on November 27, 1996.

The Board has reviewed the record and finds that appellant did not meet his burden of proof to establish an injury in the performance of duty on November 27, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² In order to determine whether an employee actually sustained an injury in the performance of 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 which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.³

The Board notes initially that the only evidence that can be reviewed on this appeal is the evidence that was before the Office at the time of its April 3, 1997 decision.⁴ Any new evidence

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

³ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁴ 20 C.F.R. § 501.2(c) provides that the Board's review is limited to evidence in the case record that was before

submitted to the Office after April 3, 1997 or to the Board on appeal cannot properly be reviewed on this appeal.

With respect to the alleged incident on November 27, 1996, an employing establishment supervisor asserted that there was no lifting involved because appellant was picking up letters from the same level. The Office, by letter dated February 28, 1997, requested that appellant submit additional information regarding the alleged incident, but no information was received prior to the April 3, 1997 decision. Although an employee's statement regarding the occurrence of an incident is of great probative value,⁵ under these circumstances appellant must at least provide some additional detail regarding the alleged incident.

The Board also notes that the medical evidence is insufficient to establish an injury in the performance of duty on November 27, 1996. In a report dated January 14, 1997, Dr. Leon R. Rudnick, a family practitioner, indicated that appellant had degenerative disc disease since 1993, without discussing a November 27, 1996 incident or providing an opinion that the incident caused an injury. The record contains notes from Dr. Rudnick dated December 24 and 26, 1996, and January 10 and 14, 1997, which are also of little probative value since they do not discuss a November 27, 1996 incident or provide an opinion on causal relationship.

The Board accordingly finds that appellant has failed to submit sufficient evidence to meet his burden of proof in this case.

The decision of the Office of Workers' Compensation Programs dated April 3, 1997 is affirmed.

Dated, Washington, D.C.
May 13, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

the Office at the time of its final decision.

⁵ *Thelma Rogers*, 42 ECAB 866 (1991).

A. Peter Kanjorski
Alternate Member