

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HELEN G. TAYLOR and U.S. POSTAL SERVICE,
POST OFFICE, Millville, NJ

*Docket No. 98-2037; Submitted on the Record;
Issued February 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty.

On July 29, 1996 appellant, then a 44-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on June 27, 1996 she sustained an injury to her neck while in the performance of duty. She explained that she injured herself when she pulled a relay bag off the top of her case and let it drop to the floor. Appellant ceased work on July 29, 1996. The employing establishment submitted documentation regarding appellant's involvement in a May 27, 1995 nonwork-related automobile accident and challenged the claim on the basis that appellant's claimed condition preexisted the alleged injury of July 27, 1996.¹ Additionally, appellant's postmaster, William G. Johnson, indicated that appellant exaggerated the weight of the relay bag allegedly responsible for her July 27, 1996 employment injury.²

By letter dated August 16, 1996, the Office of Workers' Compensation Programs advised appellant of the need for additional factual and medical information in order to make a

¹ The evidence submitted regarding appellant's May 27, 1995 automobile accident included a May 28, 1996 report from Dr. Dominic J. Laganella, an osteopath, that indicated appellant was being treated for cervical and lumbar radiculopathy, thoracic outlet syndrome and carpal tunnel syndrome. Dr. Laganella also stated that appellant was unable to return to her full duties and that she could not perform any lifting greater than 5 to 10 pounds. On July 7, 1996 Dr. Laganella modified appellant's lifting restriction to 20 pounds. The record also indicates that appellant was being treated by Dr. Steven Mandel, a Board-certified neurologist, for neck and back injuries arising from her May 27, 1995 automobile accident. In addition to the conditions noted by Dr. Laganella, Dr. Mandel also noted that appellant was suffering from temporomandibular joint disorder.

² In a statement dated July 31, 1996, Postmaster Johnson indicated that the president of the union local advised him that appellant stated "she lifted a relay sack that weighted (sic) 60 or 70 pounds at which time she heard something pop in her neck." Postmaster Johnson commented that the "average weight of these [relay] sacks are 10 [to] 20 pounds, never exceeding by regulation a total of 35 pounds" and that "[i]t is impossible for a sack of that size to weigh 60 pounds."

determination regarding her claim. The Office specifically requested, *inter alia*, a detailed description of how the injury occurred, the names of any witnesses to the injury, the immediate effects of the injury, and whether appellant had any symptoms or a similar disability prior to the alleged injury. The Office also advised appellant that her preexisting conditions of cervical and lumbar radiculopathy, thoracic outlet syndrome, carpal tunnel syndrome and temporomandibular joint disorder were not compensable. Lastly, the Office requested that appellant submit a rationalized medical opinion detailing any conditions attributable to her employment activities.

By decision dated November 27, 1996, the Office denied appellant's claim on the basis that the evidence of record failed to establish that an injury was sustained as alleged. In an accompanying memorandum, the Office explained that there was conflicting information about the claimed incident. Specifically, the Office noted that whereas appellant stated her relay sack weighed between 60 and 70 pounds, other evidence of record indicated that the average weight of a relay sack was between 10 and 20 pounds and never exceeded a total of 35 pounds.

On December 23, 1996 appellant requested an oral hearing, which was conducted on May 20, 1997. Appellant also submitted several medical reports from her treating physician, Dr. Laganella, as well as reports from her neurologist, Dr. Mandel. Both physicians expressed the opinion that the July 27, 1996 employment incident not only exacerbated appellant's thoracic outlet syndrome, but also resulted in a cervical sprain and strain. Additionally, appellant submitted a September 5, 1996 statement in response to the Office's August 16, 1996 request for additional information. She explained that her injury occurred when she was "heaving a mail sack from the top of her case to the floor." She further stated that she had performed this "particular movement many times before to avoid lifting dead weight." Additionally, appellant indicated the "sack weighed around 50 pounds." At the hearing, appellant testified that the mail sack contained "about 4 relays," weighing "10 plus" pounds a piece. Although appellant indicated she did not weigh the sack, she estimated that the sack "probably weighed about 50 pounds, maybe even 60." She further indicated that she had personally filled the sack.

In a decision dated and finalized on June 25, 1997, the hearing representative affirmed the Office's November 27, 1996 decision denying compensation. In addressing the alleged mechanism of injury, the hearing representative indicated that it was unclear how appellant could move such heavy sacks, weighing up to 50 to 60 pounds, while under strict light-duty restrictions imposed by Dr. Laganella. Additionally, the hearing representative found that he did not provide a clear diagnosis as a result of appellant's July 27, 1996 episode. The hearing representative noted that Dr. Laganella provided the same diagnoses both prior and subsequent to the alleged incident of July 27, 1996. The hearing representative explained that any disability appeared to be causally related to nonwork factors and the residuals of appellant's May 27, 1995 automobile accident. Consequently, the hearing representative concluded that the factual and medical evidence supported that appellant did not sustain a new injury as a result of the July 27, 1996 episode.

On December 4, 1997 appellant filed a request for reconsideration. The request was accompanied by a November 14, 1997 report from Dr. Laganella in which he noted a diagnosis of thoracic outlet syndrome caused by appellant's May 27, 1995 automobile accident and exacerbated and aggravated by the work-related incident on July 27, 1996. Appellant also

submitted a September 25, 1997 report from Dr. Thomas P. Costello, an osteopath specializing in pain management, who diagnosed brachial plexopathy secondary to thoracic outlet syndrome. He further indicated that the condition was “consistent with [a] repeat injury while lifting mail at work in July 1996” that “apparently exacerbated a prior injury of May 27, 1995.” Dr. Costello also diagnosed chronic pain syndrome and concomitant anxiety and depression.

In a March 13, 1998 merit decision, the Office concluded that the evidence submitted in support of reconsideration was insufficient to warrant modification of the prior decision. The Office explained that the employing establishment provided persuasive evidence that the 50-pound sack appellant allegedly pulled on July 27, 1996 would have been considerably lighter. The Office further noted that the medical opinion evidence was flawed because it was based upon an inaccurate history of injury.

The Board finds that appellant has established that she sustained an injury on July 27, 1996.

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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.³ The second component is whether the employment incident caused a personal injury. This latter component generally can be established only by medical evidence.⁴

In her September 5, 1996 statement, appellant indicated that her injury occurred when she was “heaving a mail sack from the top of her case to the floor.” She further indicated that the “sack weighed around 50 pounds.” The Office questioned the accuracy of appellant’s statement regarding the weight of the mail sack based upon “persuasive evidence” submitted by the employing establishment that the sack would have been considerably lighter than alleged. Although the Office did not specifically identify the particular evidence it relied upon, it appears that the Office based its determination on the July 31, 1996 statement from appellant’s postmaster, Mr. Johnson. As previously noted, Postmaster Johnson stated that the “average weight of these [relay] sacks are 10 to 20 pounds, never exceeding by regulation a total of 35 pounds” and that “[i]t is impossible for a sack of that size to weigh 60 pounds.”

At the hearing, appellant testified that the mail sack in question contained “about 4 relays,” weighing “10 plus” pounds a piece. Postmaster Johnson’s July 31, 1996 statement does not contradict appellant’s assertion that her mail sack weighed around 50 pounds. In fact, his statement regarding the average weight of a relay bag tends to corroborate appellant’s statement. In the instant case, there is no discrepancy regarding the average weight of a relay bag. There is, however, a misunderstanding as to the type of bag appellant was attempting to move when she injured herself. Postmaster Johnson’s statement suggests that he was under the impression that

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

appellant attempted to move a single relay bag, which in his professional opinion could not have possibly weighed 60 pounds. Appellant, however, moved a mail sack that she personally filled, which included “about four relays.” With the average weight of a relay bag being 10 to 20 pounds, as indicated by Postmaster Johnson, appellant’s mail sack could have weighed anywhere between 40 and 80 pounds. As such, appellant’s statement that the “sack weighed around 50 pounds” is not undermined by Postmaster Johnson’s July 31, 1996 statement. Thus, the Office erred in finding that the record included “persuasive evidence” establishing that appellant’s mail sack would have been considerably lighter than alleged.

The totality of the evidence supports that on July 27, 1996 appellant felt pain in her neck when she heaved a mail sack, weighing approximately 50 pounds, from the top of her case to the floor. Accordingly, it is accepted that the employment incident of July 27, 1996 occurred at the time, place and in the manner alleged.

While the Board finds that the credible evidence of record establishes that appellant experienced an employment-related incident on July 27, 1996, the question remains as to whether this incident caused a personal injury. In this regard, the Board finds that the reports of Dr. Laganella, who diagnosed cervical sprain and strain initially on July 30, 1996 and exacerbation of thoracic outlet syndrome on August 20, 1996, are sufficiently probative to find that appellant

sustained an injury on July 27, 1996.⁵ However, it is necessary to remand the case for a finding on the period or periods of disability causally related to the diagnosed conditions of cervical sprain and strain and exacerbation of thoracic outlet syndrome, and for payment of appropriate medical benefits.

The decisions of the Office of Workers' Compensation Programs dated March 13, 1998 and June 25, 1997 are hereby reversed, and the case is remanded for further appropriate action consistent with this decision of the Board.

Dated, Washington, D.C.
February 11, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁵ Furthermore, Dr. Laganella's findings are supported by the September 3 and October 1, 1996 reports of Dr. Mandel. Additionally, the record includes a July 29, 1996 emergency room report that includes a diagnosis of strained left trapezius muscle. The history of injury was noted as "lifting/pulling on a sack [at] work [and] injured [left] side of neck on Sat[urday]."