

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PAUL J. PAGLIARULO and U.S. POSTAL SERVICE,
POST OFFICE, Chelsea, MA

*Docket No. 98-1859; Submitted on the Record;
Issued March 22, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on January 21, 1998.

On February 1, 1998 appellant, then a 32-year-old postal clerk, filed a notice of traumatic injury alleging that he sustained a pulmonary spasm on January 21, 1998 due to an environmental asthma attack caused by a severely dusty environment. He stopped working on January 22, 1998.

Appellant's supervisor, Edward Goodoak, indicated that appellant returned to work on January 22, 1998 at 10:30 p.m. and that he reported breathing difficulty at 11:25 p.m. The supervisor stated that appellant left work to seek medical attention at 11:50 p.m.

On February 20, 1998 the Office of Workers' Compensation Programs requested that appellant provide additional information, including a comprehensive medical report providing medical reasons addressing the cause of his condition.

Appellant subsequently provided a report from Dr. Paul R. Mazur, a specialist in internal and emergency medicine, dated February 12, 1998. Dr. Mazur noted that appellant had been diagnosed with environmentally-induced asthma. He stated that appellant returned to work on January 22, 1998, but that within two hours of starting work in the dusty environment he started having a bronchospasm and had to leave work. Dr. Mazur indicated that removal from the dusty environment negated appellant's symptoms. He opined that he reviewed records, "...and it seems quite clear that he has environmental asthma which is aggravated by dusty environments such as the ones he has been exposed to in his job."

Appellant also submitted a statement dated March 12, 1998 stating that on the date of his injury he was exposed to high levels of paper dust. He stated that he was exposed as he

manually sorted mail from a dusty mail hamper. Appellant indicated that he was exposed for two hours and suffered two attacks.

On February 27, 1998 appellant's supervisor indicated that appellant's work site had no history of being classified as severely dusty or that the air quality was conducive to causing an environmental asthma attack. He stated that there were normal levels of dust associated with handling mail and mailbag equipment, but that air samples documenting the levels of concentration were not available. Appellant further stated that appellant's duty station afforded maximum fresh air access.

By decision dated April 13, 1998, the Office denied appellant's claim because he failed to establish fact of injury. In an accompanying memorandum, the Office indicated that Dr. Mazur's report was speculative and failed to contain discussions describing the mechanism of the injury. The Office, therefore, determined that appellant failed to establish that his asthmatic attack was related to his alleged dust exposure at work.

The Board finds that appellant has not met his burden of proof to establish that he sustained injury on January 21, 1998.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient factual evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.¹ 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.² In this case, appellant alleged that he sustained a pulmonary spasm on January 21, 1998 when he breathed dusty air in his work environment.

In the instant case, Dr. Mazur, a specialist in internal and emergency medicine, related appellant's asthmatic attack on January 21, 1998 to his work environment, but failed to provide an adequate rationale for his conclusion inasmuch as he did not explain how appellant's work environment caused or contributed to his respiratory attack. Dr. Mazur's opinion, therefore, is insufficient to meet appellant's burden of proof.³

¹ *John J. Carlone*, 41 ECAB 354 (1989).

² *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

³ *Carolyn F. Allen*, 47 ECAB 240 (1995).

Accordingly, the decision of the Office of Workers' Compensation Programs dated April 13, 1998 is hereby affirmed.

Dated, Washington, D.C.
March 22, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member