

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GLORIA M. TAVE and U.S. POSTAL SERVICE,
POST OFFICE, Long Beach, CA

*Docket No. 01-744; Submitted on the Record;
Issued December 11, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has sustained a head injury in the performance of duty on November 30, 1998.

On November 30, 1998 appellant, then a 55-year-old distribution clerk, filed a traumatic injury claim, alleging that she injured her head when an employee pushed a cage frame into her. Appellant stopped work on December 1, 1998. On the reverse side of the claim form, a supervisor disagreed with appellant's statement and indicated that the employee who allegedly pushed a cage frame into her denied the incident occurred in the manner described by appellant. He stated that appellant walked a few feet before hitting the cage frame.

By decision dated March 25, 1999, the Office of Workers Compensation Programs denied appellant's claim on the grounds that she did not establish fact of injury. The Office found that evidence of record was conflicting and thus insufficient to establish that the incident occurred at the time, place and in the manner alleged.¹

By letter dated May 7, 1999 and postmarked May 12, 1999, appellant requested an oral hearing, which was denied as untimely by the Office on October 14, 1999.

In a letter dated March 16, 2000, appellant's counsel requested reconsideration and submitted evidence and arguments in support of her request.

By decision dated June 16, 2000, the Office denied appellant's request for modification.

The Board finds that this case is not in posture for a decision.

¹ The Board notes that appellant appealed this decision to the Board on August 8, 2000 and the claim was docketed as 99-2577. Appellant requested the Board to dismiss the appeal, which the Board granted on August 22, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim,³ including the fact that the individual is an "employee of the United States" within the meaning of the Act,⁴ that the claim was timely filed within the applicable time limitation period of the Act,⁵ 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.⁶ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷ However, proceedings under the Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁸

In order to determine whether an injury was sustained 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 can only be established by medical evidence.⁹ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.¹⁰

The Office found that appellant had not established that the employment incident occurred as alleged. In this case, there are some inconsistencies in the evidence that cast doubt regarding the occurrence of the injury.

Nevertheless, as noted above, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹ The Board notes that appellant has presented a consistent history of injury since filing her traumatic injury claim. On her claim form, appellant related that

² 5 U.S.C. §§ 8101-8193.

³ *Louise F. Garnett*, 47 ECAB 639, 643 (1996); *Daniel R. Hickman*, 34 ECAB 1220 (1983).

⁴ *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

⁵ 5 U.S.C. § 8122.

⁶ *Louise F. Garnett*, *supra* note 3.

⁷ *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *William J. Cantrell*, 34 ECAB 1223 (1983).

⁹ *Id.*; *Linda S. Christian*, 46 ECAB 598 (1995).

¹⁰ *Louise F. Garnett*, *supra* note 3.

¹¹ *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

she hurt her head when a cage frame was pushed into her. The record further establishes that appellant received a head injury at work as supported by a statement by Mr. Gerald T. Evans, the employee involved in the incident. Although Mr. Evans denies hitting appellant with the cage, he did state that he learned later that she had bumped into it. The medical reports of record contain a history of injury generally consistent with appellant's account of events.

Under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence. The Board, therefore, finds that the evidence of record is sufficient to establish an incident as alleged on November 30, 1998.

The remaining issue is whether the medical evidence establishes an injury causally related to the employment incident. In a December 28, 1998 report, Dr. Hyman Gross, a Board-certified neurologist, diagnosed a closed head trauma with residual post-traumatic headaches. The physician noted the injury history as occurring on November 30, 1998 when a large postal cart hit appellant.

Proceedings under the Act¹² are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.¹³

The Board finds that the opinion of Dr. Gross, while supportive of appellant's claim, is not sufficiently rationalized to meet her burden of proof. Dr. Gross' reports do, however, raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.¹⁴ The case, therefore, will be remanded to the Office for further development of the medical evidence. On remand, the Office should prepare a statement of accepted facts, which includes a description of the November 30, 1998 employment incident and refer appellant to an appropriate medical specialist for an opinion on whether she sustained an injury to her head. After such further development as is necessary, the Office should issue a *de novo* decision on appellant's claim.

¹² 5 U.S.C. §§ 8101-8193.

¹³ *John J. Carlone*, 41 ECAB 354 (1989).

¹⁴ *Id.*

The June 16, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with the above opinion.

Dated, Washington, DC
December 11, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member