U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN FLORES and U.S. POSTAL SERVICE,
POST OFFICE, Carol Stream, Ill.

Docket No. 96-1018; Submitted on the Record;
Issued March 10, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury to his back and left leg on September 5, 1995, as alleged.

The Board has duly reviewed the case record and finds that appellant has met his burden of proof to establish that he sustained an injury in the performance of duty on September 5, 1995, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, 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.[1] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[2]

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 evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[3] Second, the

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[1] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[2] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[3] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[4]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a prima facie case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[5] However, an employee's statement 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.[6]

On September 25, 1995 appellant, then a 41-year-old body and fender repairman, filed a claim for a traumatic injury, Form CA-1, alleging that on September 5, 1995 he twisted his back and left hip area while replacing a rear door track and rollers resulting in pain in the left side of his back, hip and leg. Appellant returned to work on September 25, 1995. Appellant's supervisor controverted appellant's request for continuation of pay, stating that appellant failed to report the alleged accident until six days after it occurred and did not tell anyone it was work related. The supervisor stated that appellant knew the procedures. Appellant submitted medical evidence to support his claim. In a disability note dated September 11, 1995, Dr. Mysore N. Shivaram, a Board-certified internist, diagnosed acute lumbosacral pain and stated that appellant was disabled from September 7, 1995 and continuing. In a disability note dated September 15, 1995, Dr. Shivaram diagnosed acute lumbosacral strain and radiculopathy and stated that appellant could return to work on September 18, 1995. Medical notes dated September 18 and September 25, 1995 diagnosed lumbosacral sprain and radiculopathy and indicated that appellant stated that he might want to complete a claim so as to reclaim his sick leave. A second page from PS Form 1769 received by the Office of Workers' Compensation Programs on October 17, 1995 indicated that on September 5, 1995 appellant stated that he was replacing the rear door tracks and rollers when he turned and twisted, injuring his hip area.

By letter dated October 24, 1995, the Office requested that appellant submit additional medical evidence to establish his claim particularly a narrative report from his treating physician including an opinion on the relationship of his condition to his federal employment. In a report dated October 30, 1995, Dr. Shivaram stated that he saw appellant on September 8, 1995 for a work-related injury sustained on September 5, 1995. Based on an x-ray, nerve conduction study and electromyogram, he diagnosed left leg radiculopathy with L4 spondylolisthesis. In an attending physician's report dated October 30, 1995, Dr. Shivaram reiterated his diagnosis and checked the "yes" box that appellant's condition was work related. Appellant submitted a statement received by the Office on November 7, 1995 describing his September 5, 1995 employment injury and stated he filled out the paperwork to file a claim at the "best time" he

[4] *Id.*

[5] *Linda S. Christian*, 46 ECAB 598, 600-01 (1995); *Carmen Dickerson*, 36 ECAB 409, 415 (1985).

[6] *Linda S. Christian*, *supra* note 5 at 601; *Virgil F. Clark*, 40 ECAB 575, 584-86 (1989).

was able to do so and called his doctor on September 7, 1995 as soon as he knew his injury was more serious than he thought it was.

By decision dated December 15, 1995, the Office denied appellant's claim, stating the evidence of record failed to establish that an injury was sustained as alleged.

In the present case, appellant's claim is consistent with the facts of the case and his subsequent course of action. Within three weeks of having allegedly injured himself at work, appellant filed a claim on September 25, 1995 stating that he twisted his back and left hip area while replacing a rear door track and rollers resulting in pain in the left side of his back, hip and leg. In his controversion of the claim, appellant's supervisor stated that appellant reported the alleged accident within six days after it occurred. A second page from PS Form 1769 received by the Office on October 17, 1995 confirmed appellant's account of the injury. The contemporaneous medical evidence consisting of Dr. Shivaram's September 11 and October 30, 1995 reports and medical notes dated September 18 and September 25, 1995 stated that appellant suffered from a lumbosacral strain, left leg radiculopathy and L4 spondylolisthesis, that Dr. Shivaram treated appellant on September 8, 1995 for a September 5, 1995 employment injury and that appellant was disabled from September 7, 1995 and continuing. In his statement received by the Office on November 7, 1995, appellant stated that he filled out the paperwork to file a claim at the "best time" he was able to do so and called his doctor on September 7, 1995 as soon as he knew his injury was more serious than he thought it was. There are no discrepancies, inconsistencies or contradictions in the evidence to create serious doubt that appellant sustained an injury in the performance of duty on September 5, 1995.[7] That appellant sought medical treatment within two or three days of the alleged September 5, 1995 employment injury is established by Dr. Shivaram's September and October 1995 reports and supports appellant's claim. It was not unreasonable for appellant to wait six days before reporting the injury to his supervisor. Further, the contemporaneous medical evidence describing a lumbosacral strain and radiculopathy is consistent with the nature of the injury appellant alleged he sustained. Because the evidence of record is sufficient to establish a "fact of injury," the Board reverses the Office's finding that the evidence of record did not establish that appellant sustained an injury as alleged on September 5, 1995. The case must be remanded, however, for the Office to determine whether the medical evidence is sufficient to establish that there is a causal relationship between appellant's diagnosed condition and the implicated employment factors.[8]

[7] *See Mary Joan Coppolino*, 43 ECAB 988, 990-91 (1992).

[8] *See Gary L. Fowler*, 45 ECAB 365, 371 (1994); *Ern Reynolds*, 45 ECAB 690, 695 (1994).

The decision of the Office of Workers' Compensation Programs dated December 15, 1995 is reversed in part, and the case is remanded for further consideration in a manner consistent with this opinion, to be followed by a *de novo* decision.

Dated, Washington, D.C.
March 10, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member