U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VERNARD J. GRAY and U.S. POSTAL SERVICE,
SUBURBAN MARYLAND PROCESSING & DISTRIBUTION CENTER,
Gaithersburg, Md.

Docket No. 96-518; Submitted on the Record;
Issued January 15, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on January 18, 1995, as alleged.

On April 7, 1995 appellant, then a 42-year-old postal tractor trailer operator, filed a notice of traumatic injury (Form CA-1) alleging that on January 18, 1995 he sustained an injury to his back when he tried to "set up right" an all purpose container (APC) with mail which had leaned over a pallet of mail. On the reverse of the claim form, appellant's supervisor controverted the claim stating that as injury was not immediately reported, it is unknown whether appellant was injured in the performance of his duties.

Accompanying the claim were medical reports and notes from appellant's treating physician, Dr. Henry W. Williams, Jr., Board-certified in family practice and preventive medicine, beginning March 31, 1995. Dr. Williams noted initially treating appellant on January 19, 1995 for complaints of severe back pain in the lumbar sacral area which appellant stated occurred January 18, 1995 when he lifted a crate at work. The physician diagnosed strain and spasm of the cervical as well as lumbar sacral paraspinal musculature with limitation of motion in both areas of strain, placed appellant on complete bed rest, and expected appellant to return to limited light- duty work by April 3, 1995. The record further indicates that Dr. Williams previously treated appellant for his sciatica in the lower back on May 23 and September 26, 1994.

The employing establishment submitted statements from appellant's supervisors. Mr. Lorenzo Leak, an acting supervisor, stated that he played basketball with appellant on January 17, 1995. Mr. Leak further stated that approximately forty-five minutes after midnight on January 18, 1995, appellant commented that he was sore and that he was going to get in shape to handle him on the (basketball) court. Mr. Leak denied any knowledge of an accident or an on-the-job injury from supervisor Charles Bacon or appellant. Mr. A. Costi stated that "I am not

aware of any driver picking up an APC by himself. He may have, but I am not aware of it." Charles Bacon, appellant's immediate supervisor, wrote that appellant called on April 1, 1995 and stated that he got hurt at the West Bethesda Post Office on January 18, 1995 and that he had witnesses. Mr. Bacon further stated that he spoke with appellant on January 25, 1995 about his prime time vacation and appellant never stated that he got hurt on January 18, 1995. Mr. Charles Williams stated that anytime an APC or OTR overturns, he always assisted the driver in "right[ing] it." He further stated that "[o]n January 18, 1995, I cannot remember helping [appellant] pick up an APC." In a letter dated April 24, 1995, Robert J. Kraft, manager of Transportation Networks, stated that appellant contacted the transportation office on January 19, 1995 stating that he was ill and would not be in to work. Mr. Kraft further stated that "there was no mention of an on-the-job injury at this time." Mr. Kraft stated that on March 21, 1995, appellant's physician faxed the first documentation that mentioned "injury-on-job" and all previous faxes of Dr. Williams' medical reports stated appellant's illness was due to back spasms. Mr. Kraft additionally wrote that, during a March 31, 1995 telecom conference, appellant stated that the accident occurred on January 18, 1995 at the West Bethesda Post Office at 4:00 p.m., that there were witnesses and that he had advised his supervisor, Mr. Bacon. However, Mr. Kraft noted that Mr. Bacon denied having any such knowledge.

In a May 23, 1995 letter, the Office of Workers' Compensation Programs stated that it needed additional information to make a determination regarding the claim. Appellant was asked to explain why the injury was not reported to his supervisor within 30 days, to describe exactly how the injury occurred, to provide the names and addresses of witnesses to the injury, to state the immediate effects of the injury and what he did immediately thereafter, to state whether he sustained any other injury, either on or off duty, between the time of the injury and the date on which it was reported to his supervisor and his doctor, to describe the condition between the date of injury and the date he received medical treatment and the nature and frequency of any home treatment, to describe similar disabilities or symptoms prior to the alleged injury, and to state whether other workers' compensation claims were filed.

Appellant responded to the Office's inquiries on June 19, 1995. Appellant stated that he was not aware of the 30-day limitation. In describing how the injury occurred, appellant stated that he tried to lift upright an APC, weighing up to 240 pounds, that was leaning on a pallet. Appellant stated that he immediately received severe back pains, but that he received some assistance in setting the container upright. He stated that he could not obtain any information pertaining to the names and addresses of witnesses to the injury. Appellant denied any other injury, either on or off duty, and noted January 19, 1995 as the date the injury was first reported. He denied any similar disability or symptoms prior to this injury and denied ever filing a claim for workers' compensation benefits from any source.

On July 20, 1995 the Office requested additional clarifying information. Appellant was given 30 days to explain the effect playing basketball on January 17, 1995 had on his physical condition and his back, to explain what part of his back pain was due to playing basketball as he played basketball 2 hours prior to the claimed work injury, to explain why he failed to mention a job-related injury on January 19, 1995 when he contacted the transportation office and notified them that he was ill, to provide statements that support this injury was reported prior to April 7,

1995,[1] and to indicate what portion of his back pain on January 18, 1995 was a result of his prior history of sciatica nerve in the lower back.

In a decision dated August 23, 1995, the Office denied appellant's claim because fact of injury was not established. In the accompanying memorandum, the Office found that there was insufficient or conflicting evidence regarding whether the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office found that appellant's statements contain inaccuracies regarding his previous back condition, the date injury was reported, and that, contrary to appellant's statement, appellant had previously filed workers' compensation claims with their Office. The Office further noted that appellant failed to respond to their July 20, 1995 letter requesting clarification. The Office, therefore, found that appellant failed to demonstrate an injury as alleged and denied the claim.

The Board finds that appellant has failed to establish that he sustained an employment injury on January 18, 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."[2] 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.[3]

In order to determine whether an employee actually sustained an injury in the performance of his 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.[4] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of

[1] The Office noted that the employing establishment did not concur that this injury was reported prior to April 7, 1995.

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

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

[4] *Elaine Pendleton*, *supra* note 2.

[5] *John J. Carlone*, 41 ECAB 354 (1989).

action.[6] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[7] Such circumstances as late notification of injury, confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast sufficient doubt on an employee's statements in determining whether he has established a prima facie case.[8] The employee has the burden of establishing the occurrence of the alleged injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.

The second requirement to establish fact of injury is that the employee must submit sufficient evidence, usually in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

In the present case, appellant has not established that the incident occurred as alleged. He asserts that his back injury resulted from lifting and setting upright an APC that was full of mail on January 18, 1995. He further asserts that he told his supervisor, Charles Bacon, and that there were witnesses at the place where the injury occurred. Appellant also alleges that he received assistance in setting the container upright.

The record, however, contains inconsistencies in the evidence which cast serious doubt on the validity of the claim. First, there is no evidence that appellant reported the January 18, 1995 injury before April 7, 1995, the date appellant completed the CA-1 form. Appellant alleges he reported his injury on January 19, 1995. Robert J. Kraft stated appellant contacted the transportation office on January 19, 1995 saying that he was ill and would not be in to work, but did not report an on-the-job injury. Charles Bacon, appellant's supervisor, recalls speaking to appellant on January 25, 1995 about his prime time vacation, but stated that appellant never mentioned getting hurt on January 18, 1995. These facts are inconsistent with appellant's statement that he reported his injury on January 19, 1995.

Second, Mr. Kraft's statement indicates that in a March 31, 1995 telecom conversation, appellant stated that he told his supervisor, Mr. Bacon, and that there were witnesses to the injury. Appellant, however, "could not obtain" the name and addresses of the persons who witnessed his injury or had immediate knowledge of it. Furthermore, the statements of Mr. Bacon and the mailhandlers at the West Bethesda Post Office location, where the alleged incident took place, do not support appellant's allegations of a traumatic injury or a container that needed to be upright. The lack of a confirmation of injury may cast sufficient doubt on appellant's burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged.

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *Id.* at 255-56.

[8] *Karen E. Humphrey*, 44 ECAB 908 (1993).

[9] *John J. Carlone*, 41 ECAB 354 (1989).

Third, appellant specifically denied filing claims for workers' compensation benefits from any source and stated that he did not have a prior back condition. The record, however, directly contradicts appellant's statements. The record reflects appellant has filed eight workers' compensation claims with the Office since March 12, 1980. Moreover, contrary to appellant's contention that he does not have a prior back condition, the medical evidence indicates that appellant was treated for lower back problems by his current treating physician on May 23 and September 26, 1994. This casts doubt on appellant's credibility.[10]

There is insufficient or conflicting evidence in the file regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged. Moreover, the Office provided appellant with the opportunity to cure the deficiencies in the claim, but he failed to submit any evidence establishing that the claimed event, incident, or exposure occurred at the time, place and in the manner alleged. Appellant, therefore, has failed to meet his burden of proof in establishing that he sustained an employment injury on January 18, 1995 and thus has failed to establish fact of injury.

The decision of the Office of Workers' Compensation Program dated August 23, 1995 is affirmed.

Dated, Washington, D.C.
January 15, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member

[10] *See John Magy*, 11 ECAB 242, 244 (1959) (where the Board found that various inconsistencies and contradictions in the evidence casts considerable doubt on appellant's credibility).