U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMBERLE A. CERO and U.S. POSTAL SERVICE,
POST OFFICE, Carlisle, Pa.

Docket No. 97-636; Submitted on the Record;
Issued September 21, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant established that she sustained an injury in the performance of duty.

The Board has carefully reviewed the case record and finds that appellant has failed to meet her burden of proof in establishing that her left ankle sprain and resulting reflex sympathetic dystrophy[1] (RSD) were caused by employment factors.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] 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.[4]

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such a accident or event caused an injury as defined in

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[1] Reflex sympathy dystrophy (RSD) is defined as a disturbance of the craniosacral portion of the autonomic nervous system marked by pallor or rubor (redness), pain, sweating, edema, or skin atrophy following a sprain, fracture, or injury to the nerves or blood vessels. *Dorland's Illustrated Medical Dictionary* (27th ed. 1988).

[2] 5 U.S.C. §§ 8101-8193 (1974).

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

[4] *Id.*

the Act and its regulations.[5] The Office of Workers' Compensation Programs regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.[6] The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.[7]

In determining whether an employee 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 considered in conjunction with one another.[8] The first component to be established is that the employee actually experienced the employment incident at the time, place, and manner as alleged. In some cases, this first component can be established by an employee's uncontroverted statement that is consistent with the surrounding facts and circumstances and his subsequent course of action.[9] The second component, whether the employment incident caused a personal injury, generally must be established by medical evidence.[10]

In this case, appellant, then a 33-year-old letter carrier, filed a notice of traumatic injury on March 12, 1996, claiming that she sprained her left ankle while delivering mail when she stepped on a large dog bone in a driveway on March 30, 1995 and that inadequate treatment caused RSD to develop.[11] The employing establishment controverted the claim, and the Office requested that appellant provide additional factual and medical information.

Appellant responded by describing the unsafe conditions of the delivery site and stated that since an ankle sprain in October 1994 she had worked with an ankle brace on the advice of her physician, but that the pain and numbness had intensified and lasted longer during the workday until she knew that "there was something definitely wrong" with her ankle and foot.

In support of her claim, appellant submitted medical reports from Dr. John C. Rodgers, an orthopedic practitioner, Dr. Ted D. Kosenske, Board-certified in anesthesiology, Dr. Gary L. Blacksmith, Jr., Board-certified in family practice, and Dr. Ronald M. Schlansky, Board-certified

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[5] *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

[6] 20 C.F.R. § 10.5(15).

[7] *Richard D. Wray*, 45 ECAB 758, 762 (1994).

[8] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995); *see Elaine Pendleton*, 40 ECAB 1143, 1147 (1989).

[9] *Edgar L. Colley*, 34 ECAB 1691, 1695 (1983).

[10] *John J. Carlone*, 41 ECAB 354, 357 (1989). Every injury does not necessarily cause disability for employment. *Donald Johnson*, 44 ECAB 540, 551 (1993). Whether a particular injury causes disability for employment is a medical issue which must be resolved by competent medical evidence. *Debra A. Kirk-Littleton*, 41 ECAB 703, 706 (1990).

[11] Appellant also filed a notice of recurrence of disability concerning the March 30, 1995 incident. That claim, A3-201841, was denied and appellant appealed the decision to the Board, which affirmed the denial. (Docket No. 97-110, issued September 21, 1998).

in internal medicine, as well as a work capabilities evaluation and the results of diagnostic testing.

On September 26, 1996 the Office denied the claim on the grounds that the evidence was insufficient to establish that appellant sustained an injury in the performance of duty. The Office referred to Dr. Blacksmith's statement that he saw appellant on March 30, 1995 when she complained of continuing left ankle pain but noted that she did not mention any new injury on that date.

The Board finds that the medical evidence is insufficient to establish that appellant sustained an injury in the performance of duty on March 30, 1995.[12] Dr. Blacksmith stated in a March 30, 1995 treatment note that appellant had a strained left ankle and some intermittent pain but had been working her regular job. He added that the etiology of appellant's foot discomfort was uncertain and that she had no recent history of major trauma. Dr. Blacksmith's report is silent on the mechanism of injury—it says nothing about appellant's claim that she stepped on a dog bone. Therefore, his report has no probative value on the issue of fact of injury.

Dr. Blacksmith referred appellant to Dr. Rodgers and Dr. Schlansky, who stated in a January 4, 1996 report that appellant had chronic left ankle and foot pain, whose etiology was unclear, although a diagnosis of RSD was supported historically. Dr. Schlansky did not address the March 30, 1995 injury.

Dr. Rodgers stated on November 8, 1995 that appellant had a chronic recurring pain in her left foot, that she injured herself about a year ago and reinjured it back in March 1995 when she twisted her ankle on the job, and that she had had a recurrence of her symptoms for the past three weeks.

Dr. Rodgers added that he could not find "any specific etiology" for appellant's pain, that her ankle was "ligamentously intact" with excellent range of motion, and that her x-rays revealed no pathology.[13] He diagnosed a "minor soft tissue injury," which had become symptomatic. On December 14, 1995 Dr. Rodgers diagnosed RSD, noting appellant's complaints of continued pain in her left foot while delivering mail.[14]

While Dr. Rodgers referred to an ankle injury in March 1995, he also failed to provide any details on how appellant had twisted her ankle or to explain how appellant's complaints of

[12] *See O. Paul Gregg*, 46 ECAB 624, 634 (1995) (finding that when an employee claims an injury under the Act, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time and in the place and manner alleged, and that the event, incident, or exposure caused an "injury" as defined by the Act).

[13] X-rays of the left foot and ankle taken on March 30, 1995, the date of the alleged injury, reveal no fracture or soft tissue or bony abnormality and normal joint spaces. The November 6, 1995 x-rays noted no changes from the earlier x-rays.

[14] In a February 5, 1996 letter to the Office, Dr. Rodgers stated that appellant's RSD was affected by cold weather and that she needed to stay off her feet as much as possible if her leg bothered her.

pain six months after the alleged injury were related to stepping on a dog bone. Therefore, Dr. Rodgers' reports are of diminished probative value.

Dr. Rodgers referred appellant to Dr. Kosenske, who also diagnosed RSD, noted a history of two severely sprained ankles in 1995, stated that appellant was "quite incapacitated," and recommended a functional capacity study.[15] On December 18, 1995 Dr. Kosenske related that appellant had developed a throbbing pain within the past two months that started spontaneously and also occasionally experienced numbness in her foot that resolved on its own. He added that appellant's pain might possibly "be sympathetically driven." On March 15, 1996 Dr. Kosenske stated that appellant's RSD was "secondary to the ankle injury that she sustained last year." On June 12, 1996 Dr. Kosenske stated that appellant had "presumed" RSD and discharged her from treatment.

Dr. Kosenske's conclusion that the diagnosed RSD is causally related to last year's ankle injury is unexplained. First, Dr. Kosenske did not specify which ankle injury in 1995 resulted in RSD. Second, he did not explain, with medical rationale, how the diagnosed condition was caused by any work factors such as walking or carrying mail or stepping in hidden holes or on dog bones. Finally, his history of appellant's ankle pain taken on December 18, 1995 did not cover the March 1995 period—Dr. Kosenske noted pain and numbness developing two months previously, long after the alleged ankle sprain in March 1995.[16] Therefore, the Board finds that Dr. Kosenske's opinion is insufficient to meet appellant's burden of proof.[17]

[15] In a May 5, 1996 office note, Dr. Kosenske stated that appellant had "sympathetically mediated pain in her left ankle" and wanted him to "complete disability papers" for her.

[16] *See Patricia M. Mitchell*, 48 ECAB ___ (Docket No. 95-834, issued February 27, 1997) (finding that medical opinions based on an incomplete history have little probative value).

[17] *See Alberta S. Williamson*, 47 ECAB ___ (Docket No. 94-1762, issued May 7, 1996) (finding that appellant failed to submit a rationalized medical report based on a complete factual and medical background explaining why her condition was contracted in the performance of duty).

The September 26, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
September 21, 1998

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member