

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BEVERLY S. PAYLOR and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Baltimore, Md.

*Docket No. 97-610; Submitted on the Record;
Issued June 15, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on August 8, 1996.

Appellant, then a 49-year-old tax auditor, filed a notice of traumatic injury (Form CA-1) alleging that she "stepped off of the sidewalk area onto uneven paving with a hole in the ground" and sustained a severe right ankle sprain with ligament and muscle damage. She alleged the injury occurred on August 8, 1996 at 5:05 p.m. and that she notified her supervisor of the injury on August 12, 1996. Also on the CA-1 form Leonard Anderson, a coworker, stated that he witnessed appellant "fall off the sidewalk and twist her ankle and fell to the ground at the garage entrance about 5:05 or 5:10 p.m. (August 8, 1996)."

Appellant submitted the emergency services discharge instructions from the University of Maryland Medical Center. The discharge instructions reveals that appellant was treated by Dr. A. Singleton, an emergency medicine physician. He diagnosed right ankle sprain and directed appellant to use crutches with no weight bearing on the right ankle and to elevate whenever possible. Dr. Singleton prescribed motrin 800 milligrams and Percocet tablets for severe pain. He noted that appellant should return to the emergency room on Saturday, August 10, 1996. Dr. Singleton excused appellant from work until August 18, 1996. Appellant was released from the emergency room at 10:15 p.m.

Appellant's group manager, Michelle A. Thoifinnson, filled out a Form CA-16, authorization for examination and/or treatment on August 9, 1996. She filled in the name of the medical facility as the University of Maryland Medical Services. Item 6 of the Form CA-16 authorizes medical care for a period up to 60 days subject to conditions under "A" and "B." The treating physician is required to sign the form certifying all statements in Part B of the attending physician's report are true. Dr. Singleton did not sign the Form CA-16 or complete the attending physician's section. The record does not show that the Office of Workers' Compensation Programs paid for any of the medical services rendered.

By letter dated August 21, 1996, the Office notified appellant that the information she submitted was insufficient to establish that she sustained an injury in the performance of duty on August 8, 1996 and requested that appellant submit medical evidence to support her claim.

Appellant resubmitted the emergency services discharge instructions.

The Office rejected the claim on September 23, 1996, noting that the evidence currently of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability. The Office's fact-finding left doubt as to whether the Office accepted or rejected the incident as reported and witnessed. The decision is also unclear as to whether the Office is rejecting fact of injury or right ankle strain as diagnosed by Dr. Singleton.

The Board finds that appellant's description of the injury coupled with her witness statement is sufficient to establish that the incident occurred at the time, place and in the manner alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 timely filed within the applicable time limitation period 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 There is no dispute that appellant is a federal employee and that she timely filed a claim for compensation benefits.

The emergency service discharge instructions reveal appellant sustained an injury to her right ankle that required crutches to prevent weight bearing and prescription medication for severe pain. Thus, the Board finds that appellant has established that she sustained a right ankle sprain injury in the performance of duty. The record must be further developed as to the period or periods appellant was disabled as a result of this injury.³ The emergency services discharge instructions signed by Dr. Singleton noted that appellant was to return to the emergency room on Saturday, August 10, 1996. The record does not reveal whether appellant returned to the emergency room as directed. He also excused appellant from work until August 18, 1996. The record does not reveal whether appellant was off work as a result of this injury and suffered any wage loss.

Part B of the attending physician's report, Form CA-16, would have provided most, if not all, of the missing information had it been completed before admitting it to the record.

It is not known whether emergency services were paid for by the employing establishment who authorized the treatment, by appellant or whether the services rendered

¹ 5 U.S.C. §§ 8101-8193.

² *James White*, 42 ECAB 343 (1991).

³ *John J. Carlone*, 41 ECAB 354 (1989).

remains unpaid. In any event, the emergency discharge instructions submitted by appellant, coupled with the Form CA-16 prepared by appellant's supervisor authorizing emergency medical treatment, constitute sufficient evidence to require further development of the record.⁴ In this connection, on remand, appellant should obtain all medical records pertaining to this injury from each medical provider and promptly submit the same to the Office. In view of the Board's finding that an injury was sustained as alleged, the Office must further develop the record to determine whether appellant is entitled to continuation of pay and compensation benefits.

Finally, the record shows appellant was treated in an emergency room but does not disclose whether she was transported by ambulance and incurred fees. Similarly, the record discloses appellant was given crutches for no weight bearing on the right ankle. Appellant should forward all charges for medical services pertaining to this injury to the Office, together with all narrative medical reports of subsequent hospital visits, treatments and instructions pertaining to her return to work. Appellant should also inform the Office of all days she is claiming disability due to this injury.

The Board notes that the Office, in its September 23, 1996 informational letter accompanying the September 23, 1996 decision rejecting the claim, terminated all medical care authorized by the CA-16 prepared by appellant's supervisor. The Office should request, with appellant's permission from the University of Maryland Medical Services, all medical records related to the right ankle injury on August 8, 1996. Following receipt of all medical records from appellant and the University of Maryland Medical Center, the Office should determine whether appellant's injuries of August 8, 1996 resulted in disability for work entitling appellant to continuation of pay and compensation benefits.

⁴ *Id.*

The decision of the Office of Workers' Compensation Programs dated September 23, 1996 is hereby reversed regarding the finding that appellant did not sustain an injury on August 8, 1996; and is set aside and remanded for further development consistent with the Board's decision and order, to be followed by a *de novo* decision.

Dated, Washington, D.C.
June 15, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member