U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY PAYTON and U.S. POSTAL SERVICE,
POST OFFICE, Bristol, Va.

Docket No. 97-2513; Submitted on the Record;
Issued May 18, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on October 14, 1995 as alleged.

On December 5, 1995 appellant filed a claim for a herniated disc in his lower back, which he attributed to unloading and loading mail trucks and handling mailbags. By decision dated June 20, 1996, the Office of Workers' Compensation Programs found that the evidence failed to demonstrate that he sustained an injury as alleged. The Office found that there was insufficient or conflicting evidence regarding whether the claimed incident occurred as alleged, and that a medical condition resulting from the alleged work incident was not supported by the evidence. Appellant requested reconsideration by letter dated February 14, 1997, and the Office, by decision dated April 25, 1997, refused to modify the prior decision. The Office found: "Medical evidence need not be addressed, since the factual (nonmedical) history is not established."

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[1] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if

[1] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[2]

In the present case, appellant did not file a claim for a traumatic injury that allegedly occurred on October 14 until December 5, 1995. However, on November 14, 1995 he filed a claim for a recurrence of disability due to his April 15, 1980 employment injury. Appellant listed the date of the recurrence of disability as October 14, 1995, and the circumstances as bending and heavy lifting. Appellant stopped work on the date of the injury, and did not return to work until January 16, 1996. Three days after the injury, on October 17, 1995, appellant sought medical attention, and was thereafter treated by Dr. Arthur M. Boyd. In a report dated October 17, 1995, Dr. Boyd diagnosed an acute flare of chronic low back pain. In a report dated November 21, 1995, Dr. Boyd noted that appellant related his back problem to an injury 17 years ago at the employing establishment.

These statements from Dr. Boyd are consistent with appellant first filing a claim for a recurrence of disability due to an April 15, 1980 employment injury, and with his contention in his February 14, 1997 request for reconsideration that he believed his back condition on October 14, 1995 was a continuation of his April 15, 1980 employment injury. The medical reports after appellant's submission of a claim for a traumatic injury on December 5, 1995 contain a history of an employment injury on October 14, 1995 while unloading or lifting mail.

The fact that appellant initially believed his back pain was related to his earlier employment injury does not refute the occurrence of an injury on October 14, 1995 as alleged. An employee's statement that an incident occurred at a given time and in a given manner is of great probative value and will stand unless refuted by substantial evidence.[3] As appellant has explained why the reports of his physicians that were prepared shortly after the October 14, 1995 injury do not contain a history of the injury, the only inconsistency that casts doubt on the occurrence of the injury as alleged is appellant's failure to report it or file a claim for one month. This, however, is not enough to persuade the Board that appellant did not experience low back pain on October 14, 1995 after unloading and loading trucks and handling mailbags. Appellant was seen in a hospital emergency room less than two months earlier for low back pain after lifting heavy bags at work. Appellant's statements, his immediate stoppage of work, and the medical care he received three days after October 14, 1995 are sufficient to establish that the October 14, 1995 incident occurred as alleged by appellant.

As the only decision over which the Board has jurisdiction made findings only on whether the October 14, 1995 incident occurred as alleged and did not address the medical evidence, the Board will reverse that decision and remand the case to the Office for a determination as to what medical condition is causally related to appellant's October 14, 1995 employment incident.

[2] *Dorothy Kelsey*, 32 ECAB 998 (1981).

[3] *Eric J. Koke*, 43 ECAB 638 (1992); *Constance G. Patterson*, 41 ECAB 206 (1989).

The decision of the Office of Workers' Compensation Programs dated April 25, 1997 is reversed and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
May 18, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member