U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LISA DANIELL and U.S. POSTAL SERVICE,
POST OFFICE, Brattleboro, VT

Docket No. 98-1900; Submitted on the Record;
Issued February 28, 2000

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established an injury in the performance of duty on October 23, 1997.

In the present case, appellant filed a claim on October 24, 1997, alleging that on October 23, 1997 she injured her lower back when she lifted a package. By decision dated December 17, 1997, the Office of Workers' Compensation Programs determined that appellant had not established an employment incident or a resulting injury. By decision dated March 12, 1998, the Office denied modification of the prior decision.

The Board has reviewed the record and finds that appellant has established an employment incident as alleged, but has not submitted sufficient medical evidence to establish an employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that he or she sustained an injury while in the performance of duty.[2] In order to determine whether an employee actually sustained an injury in the performance of 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. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[3]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.110(a).

[3] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

With respect to the first component, the Board notes that an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.[4] In this case, appellant promptly filed a claim on the day following the alleged incident of lifting a package weighing approximately 38 pounds and she also sought treatment on that date. The Office determined that an employment incident had not been established, based primarily on a supervisor's October 24, 1997 statement that appellant reported for work on October 24, 1997 at 3:30 a.m. and did not complain of back pain until she requested leave at 8:00 a.m. Given the presumption accorded to appellant and the prompt notification to the employing establishment on the day following the alleged incident, the Board finds no probative evidence that would create such inconsistencies as to cast doubt on whether the incident occurred as alleged. The Board finds that appellant has established an employment incident of lifting a package on October 23, 1997.

As noted above, appellant must also submit sufficient medical evidence to establish her claim. In this case, Dr. H. Dean Bresnahan, a family practitioner, indicated in a duty status report (Form CA-17), that he examined appellant on October 24, 197 and that appellant should not work until October 27, 1997. The supervisors portion of the form describes an incident of lifting a 38 pound package at work, but Dr. Bresnahan did not complete the section of the form where he is asked to indicate if the history provided by the claimant corresponded to the description of the incident, nor does he provide a diagnosis. In a brief handwritten note dated October 24, 1997, Dr. Bresnahan stated, "her back strain and [illegible] nerve will prevent any work until October 27, 1997." Although the circumstances of the case would not require extensive medical evidence on causal relationship to establish an employment-related back strain, it is not a situation where no medical evidence on causal relationship is needed.[5] Dr. Bresnahan does not provide a report that contains an opinion that appellant sustained a diagnosed condition causally related to the October 23, 1997 employment incident. Appellant did submit a Form CA-17, dated February 23, 1998 from Dr. Jon Thatcher, an orthopedic surgeon, but this report does not provide a history of injury or an opinion on causal relationship. In the absence of probative medical evidence on causal relationship, appellant has not met her burden of proof in this case.

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[4] *Thelma Rogers*, 42 ECAB 866 (1991).

[5] *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (March 1994), which notes, for example, that minor injuries identifiable by a lay person (such as a laceration) may not require a medical report, or that a fall from a scaffolding resulting in a broken leg may require only a physician's affirmative statement as to the injury.

The decisions of the Office of Workers' Compensation Programs dated March 12, 1998 and December 17, 1997 are affirmed.

Dated, Washington, D.C.
February 28, 2000

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member