U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN J. GAMBLE and U.S. POSTAL SERVICE,
POST OFFICE, Buffalo, NY

Docket No. 99-130; Submitted on the Record;
Issued July 10, 2000

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury while in the performance of his duties.

On October 1, 1997 appellant, a rural letter carrier, filed a claim asserting that he sustained a low back injury while in the performance of his duties on February 25, 1997 when he fell on snow covered ice in the driveway of Jennie Blackmon. He stopped work on April 22, 1997 and sought medical attention the following day.

In a decision dated December 1, 1997, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the initial evidence of record was insufficient to show that the incident alleged occurred at the time, place and in the manner alleged. The Office found that the medical evidence failed to establish that appellant sustained an injury as a result of employment activities performed on February 25, 1997: the medical evidence cited no work incident of February 25, 1997, failed to present a complete medical history and provided no medical rationale. The Office also noted that appellant failed to respond to its request for additional information, including an explanation for the delay in reporting the injury to his supervisor and for the delay in seeking medical attention.

On December 1, 1997 the same day as its final decision on appellant's claim, the Office received appellant's response to the request for additional information. Appellant stated that he told his supervisor that he had fallen in the driveway but that no report was made at that time. He also told Bonnie Miller. Appellant explained that the reason he did not pursue this with the employing establishment was that he had injured himself in 1994 while working for a private employer and just assumed that the private employer would be responsible. He explained that he did not seek immediate medical attention because he was not a quitter and would really have to hurt before quitting. The only reason he went to the hospital, he stated, was that he could not walk at all. Appellant was taken by ambulance. He stated that the immediate effect of the injury was a strain in the lower back, which was just sore. Appellant still went to work. He also stated that he received physical therapy until he was hospitalized on April 23, 1997.

The Office also received additional medical evidence. In a report dated November 4, 1997, Dr. Gerard J. Diesfeld, appellant's attending physician, stated that he first saw appellant in February 1994. He related his findings at that time. It was his impression that appellant was experiencing low back pain with right sciatic neuralgia. Appellant's condition improved over the next three years until appellant suffered a reinjury to his low back on February 1, 1997 while working for the employing establishment: "The patient relates that while delivering rural mail, he was required to reach from his seated position into the narrow box and place the mail in the mailbox. During the process of twisting, turning and reaching, he noticed an aggravation of his pain." Dr. Diesfeld related his findings on examination and stated that it was his impression that appellant suffered a recurrent injury to his low back. Appellant's condition was such that he was able to continue working. After describing appellant's medical course, Dr. Diesfeld reported as follows: "it is my opinion the patient suffered his initial injury to his low back on February 14, 1994. He suffered a reinjury to his back while working for the [employing establishment] on February 1, 1997."

A list of appointment dates for appellant's back condition shows 13 appointments in 1994; 3 appointments in 1995; 2 appointments in 1996; an appointment on February 21, 1997, labeled "reinjury to back;" appointments on March 7 and April 4, 1997; an appointment on April 23, 1997, labeled "hospital admittance through emergency room;" and 8 later appointments.

The Office also received the results of a number of diagnostic studies.

On March 23, 1998 appellant requested reconsideration. In support thereof, he explained that in February 1997 he began to experience an exacerbation of a preexisting back condition. First, he stated falling while delivering mail, which he reported to his supervisor. Second, appellant twisted and wrenched his back while reaching for a bundle of mail in his vehicle. He took no time off from work for these injuries but did seek medical care when the pain did not subside.

Appellant submitted a treatment note dated February 21, 1997. This note indicates that appellant began to experience a recurrence of low back pain on February 1, 1997. As a rural letter carrier, he is required to reach from his seated position into the mailbox. During the process of twisting, turning and reaching, he noticed an aggravation of pain. A physical therapy note dated April 7, 1997 indicates that appellant's most recent onset of symptoms began approximately six weeks earlier when, while working and sitting in his car, he reached down with his left hand for a package and experienced a burning sensation along his right lumbar area.

In a decision dated June 25, 1998, the Office denied a review of the merits of appellant's claim on the grounds that the evidence submitted in support of appellant's request was immaterial and insufficient to warrant such a review.

The Board finds that this case is not in posture for a determination of whether appellant sustained an injury while in the performance of his duties.

In *William A. Couch*,[1] the Board remanded the case because the Office, in issuing a compensation order dated July 17, 1989, failed to consider new evidence it received on July 13, 1989. The Board stated:

> "The Federal Employees' Compensation Act provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision, it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed, it is critical that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office."

In this case, the Office received additional evidence on December 1, 1997, the same day that it issued its compensation order rejecting appellant's claim. Although this presents a slightly different picture from that presented in *Couch*, wherein the Office received evidence several days before its final decision, the Board has held that the principle of *Couch* applies with equal force.[2] Because the Office received additional evidence but did not review it when rejecting appellant's claim, the case must be remanded for a proper review of the evidence and an appropriate final decision on appellant's entitlement to compensation.[3]

[1] 41 ECAB 548 (1990).

[2] *Linda Johnson*, 45 ECAB 439 (1994).

[3] Because appellant has expanded his claim, the Office, on remand, should not limit its review of appellant's claim to the alleged slip and fall of February 25, 1997.

The December 1, 1997 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.[4]

Dated, Washington, D.C.
July 10, 2000

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

[4] The disposition of this appeal renders moot the Office's June 25, 1998 decision denying a review of the merits of appellant's claim.