U. S. DEPARTMENT OF LABOR

# Employees' Compensation Appeals Board

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In the Matter of DAVINDER K. ARORO and U.S. POSTAL SERVICE,
POST OFFICE, Hauppauge, NY

*Docket No. 00-1678; Submitted on the Record;*
*Issued October 10, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on January 25, 2000, as alleged.

On January 28, 2000 appellant, then a 45-year-old letter carrier, filed a traumatic injury claim alleging that on January 25, 2000 he sustained left side leg pain and back pain when he slipped and fell on icy steps while on working his mail delivery route. He received medical care on January 28, 2000 from Med Plus, an employing establishment contract facility and stopped work on that date. The claim was controverted. Appellant's supervisor noted that appellant worked eight hours plus overtime on January 26 without apparent difficulty, was "RDO" on January 27 and reported the employment incident on January 28, 2000. From January 30 to February 4, 2000 and February 17 to 24, 2000 he performed light-duty clerical work.

Appellant submitted a form report dated January 28, 2000 from a physician whose signature is illegible. The physician noted that appellant fell on ice and injured the left side of his back. He diagnosed lumbosacral strain/sprain and a left knee contusion. By check mark, the physician indicated that appellant's condition was job related. He advised bed rest until January 30 and lifting no more than three pounds from that date until February 4, 2000. Appellant also submitted a duty status report dated January 31, 2000 from a physician whose signature is illegible. The physician diagnosed a fractured left heel spur and left side strain/sprain and restricted appellant's work activities.

By letter dated February 11, 2000, the Office of Workers' Compensation Programs requested additional factual and medical evidence and allowed appellant 30 days within which to respond to its request.

In response, appellant submitted duty status reports dated February 10 to 25, 2000 from a physician whose signature is illegible. The physician diagnosed a calcaneus fracture. The February 10, 2000 report indicated that appellant was in a cast and using crutches. A February 17, 2000 report stated that appellant could not carry, lift or engage in excessive

walking. The February 25, 2000 form stated that appellant was performing light-duty work and was restricted from lifting, carrying and prolonged standing.

Appellant also submitted written responses to the Office's questions regarding the January 25, 2000 employment incident. He asserted that he did not immediately report the employment incident to his supervisor because his supervisor was unavailable. Appellant stated that he notified his supervisor on the morning following the incident but completed his delivery route that day and sought medical care the following day. He further stated that he notified his supervisor that he planned to have an x-ray and his supervisor advised him to see the employing establishment's contract physician. Appellant noted that he first received medical treatment on January 27, 2000 from Dr. Panna Shah, a general practitioner.

The employing establishment submitted statements from appellant's supervisors. In a statement January 31, 2000, Joseph S. Tracz alleged that appellant did not notify him of the employment incident on January 25, 2000 and that he worked his assignment on January 26, 2000 without apparent difficulty. He also alleged that he could not remember whether appellant reported that he fell while working his route and that many carriers were discussing the weather conditions. In a statement dated February 1, 2000, Joseph V. Falzone asserted that on January 28, 2000 he received a telephone call from the employing establishment regarding appellant. He stated that he advised the employing establishment that appellant had not notified him of the January 25, 2000 employment incident on that day or January 26, 2000.

By decision dated March 15, 2000, the Office denied appellant's claim on the grounds that the evidence of record failed to establish fact of injury.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on January 25, 2000, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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] Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.[3]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4]

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *See Ronald K. White*, 37 ECAB 176, 178 (1985).

[4] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her condition for which compensation is claimed is causally related to the injury.

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged or whether the alleged injury was in the performance of duty.[6] Nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action.[7] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established his or her claim.[8]

In this case, the Board finds that evidence of record casts serious doubt upon appellant's allegation that the January 25, 2000 employment incident occurred at the time, place and in the manner alleged. The claim was controverted by the employing establishment. Mr. Tracz noted that appellant did not immediately report the incident on January 25, 2000 and that he worked for eight hours on January 26, 2000 plus overtime without reporting the incident and without apparent physical difficulty. Mr. Tracz stated that he did not recall that appellant notified him of the alleged injury until January 28, 2000 when appellant filed his claim. Mr. Falzone noted that he did not receive notice of appellant's alleged injury on January 25 or 26, 2000. Further, appellant did not seek medical treatment until January 28, 2000. This delay creates serious doubt that the employment incident occurred at the time, place and in the manner alleged. Appellant has explained his capacity to work full duty with overtime on January 25, 2000 without apparent difficulty. In total, his conduct is inconsistent with injury sustained on January 25, 2000.

The second component of fact of injury is whether appellant submitted medical evidence to establish that the employment incident caused a personal injury. Causal relationship is a medical issue[9] and generally must be shown by rationalized medical evidence. Rationalized medical evidence is medical evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship

[5] *Id.*

[6] *See Elaine Pendleton*, *supra* note 2.

[7] *See Shirley A. Temple, supra* note 4 at 407; *Joseph H. Surgener* 42 ECAB 541, 547 (1991).

[8] *See Shirley A. Temple, supra* note 4 at 407; *Constance G. Patterson*, ECAB 206 (1989).

[9] *Mary J. Briggs*, 37 ECAB 578 (1986).

between the diagnosed condition and the specific employment factors identified by the claimant.[10] The mere fact that a disease manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two. Neither the fact nor the belief of appellant that the disease was caused or aggravated by employment conditions is sufficient to establish causal relationship.[11]

The record contains insufficient medical evidence to establish that appellant sustained injury causally related to the January 25, 2000 employment incident. The duty status reports dated January 31 to February 25, 2000 merely note appellant's diagnosis and work activity restrictions. The record is otherwise devoid of relevant medical evidence.

The decision of the Office of Workers' Compensation Programs dated March 15, 2000 is hereby affirmed.

Dated, Washington, DC
October 10, 2001

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

[10] *See Gary L Fowler*, 45 ECAB 365 (1994).

[11] *Victor J. Woodhams*, 41 ECAB 345 (1989).