U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE JEFFREY and U.S. POSTAL SERVICE,
POST OFFICE, East Cleveland, OH

Docket No. 01-444; Submitted on the Record;
Issued October 26, 2001

DECISION and ORDER

Before WILLIE T.C. THOMAS, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained back and neck injuries while in the performance of duty February 3, 1998, causally related to factors of his federal employment.

On February 5, 1998 appellant, then a 49-year-old carrier, filed a claim alleging that his supervisor struck him twice with his office door and injured his left torso, back and arm. Appellant did not stop work but went on limited duty subject to restrictions.[1]

Accompanying his claim were a duty status report dated February 8, 1998; a medical report dated February 20, 1998 from Dr. Daniel Breitenbach, a Board-certified internist and fitness-for-duty physician; a return to work certificate dated February 20, 1998; a statement from appellant's supervisor dated February 27, 1998; an employing establishment letter of contravention dated March 9, 1998; a memorandum of telephone conference dated March 11, 1998; appellant's narrative statement; and four witness statements from Kenneth Robinson, Stephanie Johnson, Alfonzo Wilson and Carmelita Burton. The duty status report diagnosed a right shoulder strain and noted that appellant could return to work subject to standing, sitting and lifting restrictions. The fitness-for-duty examination reported by Dr. Breitenbach noted that appellant was injured when a door was slammed on him. He further indicated an essentially normal physical examination but noted that appellant had difficulty with forward flexion and extension. Dr. Breitenbach diagnosed paralumbar muscle strain and spasm. He indicated that appellant could return to work subject to restrictions on sitting, standing and lifting and could not deliver mail or drive a postal vehicle. The return to work certificate prepared by Dr. Breitenbach reiterated the above work restrictions stated in the fitness-for-duty examination.

The statement from appellant's supervisor dated February 27, 1998 indicated that appellant entered the office where the supervisors and manager were having a meeting, and

[1] Appellant was offered a limited-duty position subject to restrictions set forth by his physician. Although the job offer was not signed by appellant the record indicated that appellant was working a limited-duty position after February 5, 1998.

requested instructions from his supervisor. Appellant's supervisor addressed appellant by his first name, and appellant requested to be addressed as Mr. Jeffrey and then refused to leave the supervisors office. The supervisor indicated the meeting was then moved to another location. He further noted that he did not hit appellant with the door.

The employing establishment letter of contravention noted that the witness statements supported the contention that appellant was not struck by his supervisor. The memorandum of telephone conference with appellant and the Office clarified the date of injury and clarified appellant's allegation that his supervisor struck him with the door. Appellant indicated that there were witnesses to the incident. His narrative statement noted that on February 3, 1998 he was attempting to get instructions from his supervisor when his supervisor addressed him by his first name. Thereafter, appellant alleges his supervisor requested that he leave the office and then struck him twice with the door. The witness statements from Mr. Robinson and Ms. Johnson specifically indicated that appellant was not struck by a door. The witness statement from Mr. Wilson indicated that the supervisor attempted to shut the door twice but appellant was in the doorway. Witness Ms. Burton indicated that appellant was asked by his supervisor to leave the office and appellant subsequently walked away from the door.

In a decision dated March 23, 1998, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on February 3, 1998 as required by the Federal Employees' Compensation Act.[2] The Office found that the initial evidence of file was insufficient to establish that appellant experienced the claimed incident on February 3, 1998.

Appellant requested reconsideration and submitted duplicative records as well as a new witness statement from Mr. Wilson, whose supplemental statement indicated that appellant stood in the doorway of his supervisor's office when appellant's supervisor attempted to end the discussion by closing the door twice. The statement did not indicate that appellant was struck by the door.

In a decision dated November 2, 2000, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision.

The Board finds that appellant has failed to establish that he sustained an injury on February 3, 1998 while in the performance of duty.

An employee seeking benefits under the Act[3] 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 filed within the applicable time limitation 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."[4] These are the essential elements of each and every compensation

[2] 5 U.S.C. §§ 8101-8193.

[3] *Id*.

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

claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[5]

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.[6] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[8] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[9]

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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[10] Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative valued and will stand unless refuted by strong or persuasive evidence,[11] an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.[12]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[13]

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[5] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[6] *Elaine Pendleton*, *supra* note 4.

[7] *John J. Carlone*, 41 ECAB 354 (1989).

[8] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[9] *Id.* at 255-56.

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

[11] *Robert A. Gregory*, 40 ECAB 478 (1989).

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

[13] *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

In this case, appellant alleged he was injured on February 3, 1998 when his supervisor struck him twice with his office door. However, appellant did not stop work because of the injury nor did he seek medical treatment for three weeks.[14] The witnesses to the alleged incident indicated that appellant was standing in the doorway to his supervisor's office, but all denied that appellant was struck in the left torso and arm as alleged. Although appellant presented a report from Dr. Breitenbach and was placed on light duty, at no time did he notify his supervisor that this was work related. These circumstances cast serious doubt on appellant's *prima facie* claim.

The medical evidence submitted by appellant does not support that the incident of February 3, 1998 occurred as alleged. The only medical record submitted was a February 20, 1998 report by Dr. Breitenbach, a fitness-for-duty physician, which was nearly three weeks after the alleged incident. In this report, Dr. Breitenbach merely indicated that appellant "was injured on February 5, 1998 when he had a door slammed on him…." However, he did not indicate that this injury occurred at work or was in any way work related.

For these reasons, the Board finds that appellant has not established that the claimed incident occurred as alleged. Consequently, appellant has not met his burden of proof in establishing his claim.

The decision of the Office of Workers' Compensation Programs dated November 2, 2000 is affirmed.

Dated, Washington, DC
October 26, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

[14] In Dr. Breitenbach's report dated February 20, 1998, there is a reference to appellant seeking treatment from his family physician; however, appellant submitted no medical records from his treating physician to substantiate his claim.