U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANGELA HOFFMAN and U.S. POSTAL SERVICE,
POST OFFICE, Cheektowaga, NY

Docket No. 00-1111; Submitted on the Record;
Issued September 14, 2001

DECISION and ORDER

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

The issue is whether appellant sustained a left ankle injury while in the performance of duty on October 12, 1996.

On September 30, 1997 appellant, then a 66-year-old window clerk, filed a traumatic injury claim alleging that on October 12, 1996 she twisted her left ankle and ruptured her Achilles tendon while in the performance of duty. Appellant indicated that she was required to lock the parking lot gate at the postal facility at the end of her shift on Saturday. On October 12, 1996 she locked the gate and then walked up a grassy hill. She related that she felt as if a rubber band snapped in her ankle, which forced her to sit down. She described the pain as so intense that she lost consciousness for a short time.

Appellant indicated that when she went back inside her building, she was noticeably limping, but it was the end of her shift and all she could think of was going home. She alleged that she was in a lot of pain, but thought the pain might have been caused by a previously diagnosed Baker's cyst in her left heel or arthritis. Appellant continued to work her regular duty until December 14, 1996 when she went to the physician and discovered that she had a ruptured Achilles tendon. She stopped work on December 14, 1996 and did not return.[1] Appellant underwent surgery including a left excision of a ruptured Achilles tendon on April 16, 1997.

In a report dated October 18, 1996, Dr. Mathew D. Alukal, a rheumatologist, noted that appellant was seen on an emergency basis on October 16, 1996, for her left foot and ankle problem. At that time appellant had an acute left foot drop, "moderate active inflammatory synovitis of the joints of the wrists, proximal interphalangeal joints of both hands, knees

[1] Appellant sustained an injury at work on February 20, 1996 while moving a cart, which was accepted by the Office of Workers' Compensation Programs for a bilateral knee sprain. (Claim A02-710421). Appellant did not miss any time from work following that injury. Appellant worked limited duty from February 20 to July 1, 1996, when she returned to regular duty.

especially of the right knee with a Baker's cyst formation in the posterior aspect and a swollen left ankle."

In a report dated February 28, 1996, Dr. Walter D. Hoffman, a Board-certified orthopedic surgeon, noted that on February 16, 1996 appellant was moving some heavy equipment when she felt a strain in her knees. Dr. Hoffman related that appellant was seen at an outpatient clinic on February 20 and 22, 1996 where x-rays were obtained but proved to be negative for a fracture or bony abnormality. He reported swelling of the prepatellar bursas bilaterally around the patellar tendon and diagnosed "traumatic patellar tendon bursitis (jumper's knee) causally related to work-related accident [February 16, 1996]." Appellant was placed on limited duty with a restriction that she not push, pull or lift more than 15 pounds.

In a May 10, 1996 report, Dr. Hoffman noted that appellant complained of pain in her knees, ankles, heels and feet, with swelling over the course of the workday so that she could barely walk. He reported that appellant ambulated with a considerable laboring gain, but that she had full range of motion and no swelling in the knees. Dr. Hoffman reported that the etiology of appellant's complaints were unclear; therefore, she was being referred to a rheumatologist.

A magnetic resonance imaging (MRI) scan was performed on appellant's left and right knees on June 6, 1996 and showed some degenerative changes in the medial meniscus.

In a report dated December 20, 1996, Dr. David J. Pochatko, a Board-certified orthopedic surgeon, described appellant's February 16, 1996 work injury and also related that appellant twisted her ankle mildly a few months ago, which increased the pain she was having in her leg. He reported physical findings, noting that appellant walked with a lack of Achilles tendon function. Dr. Pochatko diagnosed "a chronic Achilles tendon rupture caused by the February 16, 1996 incident, just further irritated by twisting her ankle a few months ago." Appellant's left leg was eventually placed in a short cast while she awaited authorization by the Office for surgery.

The employing establishment submitted a statement from Jim Minkiewicz, appellant's supervisor, who stated that appellant did not mention twisting her ankle on October 12, 1996. He also noted that appellant continued to perform her regular duties from October 12 to December 14, 1996.

On January 15, 1997 appellant filed a claim for a recurrence of disability beginning December 14, 1996. The date of the original injury was listed as February 16, 1996.

In a report dated February 11, 1997, Dr. Pochatko stated:

> "On [February 16, 1996] [appellant] states to me that she injured her Achilles tendon. It is now available to me that she complained about both knees hurting, but the right was far worse than the left. It is possible that the patient had such severe pain in the knee that she did n[o]t feel the problem in her leg. It is also possible that the pulling of the tendon in the posterior leg caused pain up to her knee and she was interpreting it as knee pain.
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> "It is very difficult for me to say exactly what was going on [February 16, 1996] because I was not there and did not examine the patient. However, these are two

theories I have for how the patient's complaints of knee pain may be interpreted. It is possible that the Achilles tendon problem was missed by the initial examiner. The Achilles tendon problem was then reirritated sometime prior to seeing me in the office on December 20, 1996 and now it becomes the main problem."

The Office referred appellant for a second opinion evaluation to determine whether the new condition of an Achilles tendon rupture resulted from the original February 16, 1996 work injury. In a report dated March 7, 1997, Dr. Edward Blair, a Board-certified orthopedic surgeon and Office referral physician, noted appellant's work injury on February 16, 1996 and her subsequent medical history. Dr. Blair stated: "I suggest that she does have a torn left heel cord and that her heel cord likely ruptured at the time of her second accident when she was closing a gate, December 16, 1996. However, I feel the first incident, i.e., pushing the loaded mail cart, may have weakened the tendon. However, I do not have reports to indicate that she complained of a problem with her left heel cord following it."

In a decision dated April 3, 1997, the Office denied the compensation on the grounds that evidence was insufficient to establish that her claimed recurrence of disability was causally related to the February 16, 1996 work injury.

In a letter dated October 23, 1997, the Office advised appellant of the factual and medical evidence required to establish her claim.

In a decision dated November 24, 1997, the Office denied compensation on the grounds that the evidence was insufficient to establish fact of injury.

Appellant subsequently requested a hearing.

In a January 27, 1998 report, Dr. Pochatko noted that he had been treating appellant since December 17, 1996. He related that appellant was pulling a cart at work on February 16, 1996 when she apparently strained her knee, but also complained of pain in the entire leg. Dr. Pochatko noted that appellant continued to work and complained of leg pain until she twisted her foot/ankle at work on October 12, 1996. He stated that appellant suffered from an Achilles tendon tear, which required her to undergo surgery on April 14, 1997. Dr. Pochatko reported physical findings and stated:

"It is my opinion that his patient suffered an injury at work on February 16, 1996. That injury in my opinion caused a partial tear of the Achilles tendon and on October 12, 1996 the patient's injury at work at that time completed the tear of the tendon. On December 20, 1996 where I said 'twisted her ankle mildly' this is what patient stated to me and with a partial tear already present it would not take much to complete the tear of this tendon since the patient continued to work on it since February16, 1996. Working on a partially torn tendon and not allowing it to heal caused it to further weaken and not get strong again and this mild twisting of the ankle led to a complete tear."

On July 13, 1998 Mr. Minkiewicz stated: "In regards to locking of the main gate where the vehicles are kept. This gate has been locked by going through the vehicle parking lot, locking [the gate and] returning the same way."

Sheryl Holy, an employing establishment injury compensation specialist, stated:

> "It is not necessary for an employee to exit the front of the building to lock the gate of the vehicle parking area, since the gate is opened from inside the vehicle parking lot area in the morning. Also, should a clerk attempt to open the gates from the outside driveway, the padlock is easily accessed since the two gates meet together and there is an opening between them large enough to access the padlock from either side ... there is a side walk from the doors [of the employing establishment] to the driveway entrance of the vehicle parking lot. It would not be necessary to walk across the grass hill."

In an October 7, 1998 decision, an Office hearing representative set aside the November 24, 1997 decision and remanded the case for further consideration.[2]

In an October 15, 1998 witness statement, Antoinette Chapman certified that from January 1993 through January 1996, she worked at appellant's duty station. She noted that she was also responsible for closing the gates with a large chain and lock. She reported that at first she was told to close the gates from inside the parking lot, but the procedure changed to having to lock the gates from outside the lot. Ms. Chapman confirmed that there was a small hill that could be walked over in carrying out appellant's duties.

In a decision dated December 21, 1998, the Office again denied compensation because the evidence failed to establish that appellant sustained on injury as alleged on October 12, 1996.

Appellant requested a hearing which was held on September 29, 1999.

In a November 30, 1999 decision, an Office hearing representative affirmed the Office's December 21, 1998 decision.

The Board finds that the case is not in posture for decision.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. 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.[4]

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[2] The Office on remand doubled the claims for the October 12 and February 20, 1996 injuries into a master case file record (A02-734350).

[3] The Board has jurisdiction to review decisions issued within one year of the dated of appellant's appeal on January 19, 2000. Consequently, the only decision before the Board is dated November 30, 1999. The Board does not have jurisdiction to consider the Office's April 3, 1997 decision denying appellant's claim for a recurrence of disability.

[4] *Willie J. Clements, Jr.*, 43 ECAB 244 (1991).

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden where there are such inconsistencies in the evidence as to case serious doubt upon the validity of the claim.[5]

In this case, the Office denied appellant's claim for a traumatic injury on October 12, 1996 noting that appellant did not report that she hurt her ankle to her supervisor and that she continued to work until she was diagnosed with an Achilles tendon rupture on December 14, 1996.

However, appellant's actions in not filing a traumatic injury claim immediately following the October 12, 1996 event are not that extraordinary given that she was already diagnosed with an arthritic condition and a Baker's cyst. It seems reasonable that appellant may have believed that her pain was associated with those conditions. A medical report from appellant's rheumatologist also indicates that she was treated for left ankle pain four days after the alleged work incident, at which time she was told that her pain was due to a Baker's cyst. When appellant was finally diagnosed with a ruptured Achilles tendon, she filed a claim for a traumatic injury and a recurrence of disability. Because appellant's statement of events on October 12, 1996 is not specifically contradicted by the employing establishment[6] or the record in general, it carries sufficient weight to establish that a work incident occurred at the time, place and in the manner alleged.[7]

The remaining issue to be resolved is whether the medical evidence establishes a causal relationship between the October 12, 1996 work incident and the condition of an Achilles tendon rupture. Appellant has submitted several reports from Dr. Pochatko indicating that her February 20, 1996 work injury may have caused the beginning of a rupture or tear, which was further aggravated by the October 12, 1996 work incident. Dr. Pochatko's opinion is not contradicted in the record and is thus sufficient to require further medical development by the Office, including an examination by a Board-certified physician. The Board notes that the Office referral physician was unable to perform a physical examination since appellant's leg was in a cast, but he speculated that appellant aggravated her preexisting ankle condition when she tripped at work.

Additionally, the Board directs the Office to take into consideration on remand whether appellant's Achilles tendon rupture is either a continuing medical condition that was causally related to her February 20, 1996 work injury or a consequential injury. Dr. Pochatko has opined

[5] *Mary Joan Coppolino*, 43 ECAB 988 (1992); *Eric J. Koke*, 43 ECAB 638 (1992).

[6] The employing establishment contends that appellant was not required to walk across the grassy hill, but that does not establish that the incident of walking and tripping as described by appellant did not occur as she alleged.

[7] An employee's statement alleging that an injury occurred a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence. *Doyle W. Ricketts*, 48 ECAB 167 (1996).

that appellant's knee pain during the months following the February 20, 1996 work injury was not inconsistent with a torn ligament in the ankle condition. Moreover, the Office referral physician suggested that the February 20, 1996 work injury may have weakened appellant's ankle tendon.

On remand, after further development as deemed necessary by the Office, a *de novo* decision should be issued on appellant's entitlement to compensation for medical benefits and wage loss due to the left ankle condition.

The November 30, 1999 decision of the Office of Workers' Compensation Programs is hereby vacated and the case is remanded for further consideration.

Dated, Washington, DC
September 14, 2001

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member