U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BENNIE M. MORRIS and DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, New Haven, CT

Docket No. 01-1887; Submitted on the Record;
Issued July 11, 2002

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS, MICHAEL E. GROOM

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty on June 2, 2000.

On June 13, 2000 appellant, then a 49-year-old census enumerator, filed a notice of traumatic injury, Form CA-1, alleging that on June 2, 2000 he sustained an injury to his neck and back while performing his employment duties. The employing establishment stated that he stopped work on June 2, 2000.[1]

On September 25, 2000 the employing establishment controverted appellant's claim. A statement from his supervisor, Ms. Jones, noted that at 4:45 p.m. on June 2, 2000 appellant's crew leader released him from working status because he was late and not completing his work properly, that he was upset and wanted more work, that appellant did not report that he had fallen or been injured at that time. In a June 2, 2000 communication, appellant stated that he told Supervisor Richard Butler and Crew Leader Naresh Kaushik on June 2, 2000 about the incident that day. A June 2, 2000 statement by Mr. Kaushik noted that appellant was released from work that day. A June 1, 2000 statement by Supervisor Jones indicated that appellant was late for a meeting that day, brought in work incorrectly completed and failed to show up for a later meeting. In a July 7, 2000 Form CA-16, Dr. Beverley A. Marr, a chiropractor, noted that she first saw appellant on June 9, 2000, gave a history of appellant slipping and falling, diagnosed a lumbar spine strain/sprain and contusion and marked "yes" to the question on whether the condition was caused by appellant's employment.

On October 3, 2000 the Office of Workers' Compensation Programs received a September 21, 2000 authorization for evaluation and/or treatment completed by Dr. Marr stating a history of appellant slipping and falling at work and diagnosing a lumbar spine strain/sprain.

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[1] Appellant's supervisor, Kathleen Jones, stated that appellant was inaccessible from June 2 through June 14, 2000 and was put in a nonwork status as of June 2, 2000.

In a June 7, 2000 notice of claim for compensation, appellant stated that "After I completed interviewing a residence at 22 Parkside Drive, I was walk[ing] down on to Valley St and I tripped on gravel/rocks and fell down and I hurt my low back and neck." An employing establishment statement indicated that appellant was informed by his superiors on June 2, 2000 that "[he] would be place[d] in a leave-without-pay status because of the problems they were having with his tardiness and performance. After being informed of this, [appellant] then filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation."

By letters dated January 19, 2001, the Office requested detailed factual and medical information from appellant.

In an October 16, 2000 attending physician's report Form CA-20, Dr. Marr gave a history of appellant slipping and falling and diagnosed a lumbar spine strain/sprain contusion.

In a January 29, 2001 response to an Office January 19, 2001 request for additional information, appellant stated that he fell, laid a few moments, got up, went to his next residence, then met with his superiors, reported the incident and then went home to bed. In a June 13, 2000 report, Dr. Marr noted that on June 9, 2000 appellant related to her that he slipped and fell to the ground, that he reported the incident to his superiors and went home to rest. Dr. Marr diagnosed lumbar strain/sprain, contusion to lumbar spine and cervical strain/sprain; and a September 30, 2000 report of an x-ray, her note included a diagnosis of mild scoliosis in the lumbar spine, subluxation at L4-5 and L1-2 and a bone spur at L5, but did not indicate when the x-ray was taken.

By decision dated March 20, 2001, the Office denied appellant's claim. The Office found that the evidence of record did not support that the incident occurred as alleged or that an injury resulted from the alleged incident.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on June 2, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 and that the claim was filed within the applicable time limitations of the Act.[3] An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the

[2] 5 U.S.C. §§ 8101-8193.

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

manner alleged,[4] that the injury was sustained while in the performance of duty[5] and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.[6] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

In a traumatic injury case, the employee must establish by the weight of reliable, probative and substantial evidence that the occurrence of an injury is in the performance of duty at the time, place and in the manner alleged and that the injury resulted from a specific event or incident.[8] The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[9]

Such circumstances as late notification of injury, lack of confirmation of 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] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[11]

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged. Although given an opportunity to do so, appellant failed to clarify how the alleged incident occurred, *i.e.*, he stated that he slipped on gravel/rocks/sand and fell, that he tripped and fell and that he slipped, his feet went in the air and he fell on his back. There is a difference between tripping and falling and slipping and going in the air and landing on your back. This discrepancy was never explained. Appellant claimed that he notified his superiors immediately, but his superiors refuted this and stated that appellant did not report the June 2, 2000 incident until June 7, 2000, four days after the alleged incident, yet he met with Supervisor Butler and Crew Leader Kaushik only a couple of hours after the alleged incident. His superiors saw no obvious signs of injury. Appellant never mentioned the incident to anyone, continued to work and failed to obtain medical treatment for at least four days after the alleged incident. He stated that he was in such pain he could hardly walk, that he went to a hospital emergency room the next day, June 3, 2000, because the pain was so bad yet did not wait to be

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

[5] *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *Steven R. Piper*, 39 ECAB 312 (1987).

[7] *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[8] *See Joshua Fink*, 35 ECAB 822, 823-24 (1984).

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

[10] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[11] *Robert A. Gregory*, *supra* note 4; *Thelma S. Buffington*, 34 ECAB 104, 109 (1982)

seem by a doctor because it was taking too long. No evidence to support his visit to an emergency room was submitted.

In addition, the medical evidence of record is from a chiropractor. As Dr. Marr failed to diagnose a subluxation as demonstrated by x-ray to exist she is not considered a physician in this case and her reports are not considered medical evidence.[12] No medical evidence was submitted which provided a rationalized medical opinion based on an accurate factual history causally relating a diagnosed condition to the alleged June 2, 2000 incident.

In view of the inconsistencies in appellant's statements regarding how he sustained his injury and the lack of a physician's rationalized medical opinion causally relating a diagnosed condition to the alleged incident of June 2, 2000, the Board finds that there is insufficient evidence to establish that appellant sustained an injury to his neck and back in the performance of duty on June 2, 2000, as alleged.

The decision of the Office of Workers' Compensation Programs dated March 20, 2001 is affirmed.

Dated, Washington, DC
July 11, 2002

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[12] § 8101(2) of the Act provides that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.