

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of OLEG M. SIMANOVSKY and U.S. POSTAL SERVICE,  
POST OFFICE, Edison, NJ

*Docket No. 02-2304; Submitted on the Record;  
Issued January 29, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty on November 13, 2001.

On November 13, 2001 appellant, then a 63-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). Appellant indicated that on that date he had sustained a right knee and low back injury when he tripped and fell over steps that were hidden by fallen leaves.

By decision dated January 16, 2002, the Office of Workers' Compensation Programs denied the claim, finding that appellant had not established an incident as alleged nor submitted sufficient medical evidence to establish fact of injury. In a decision dated August 28, 2002, the Office denied modification.

The Board finds that appellant has established an employment incident as alleged, but the medical evidence is not sufficient to establish an injury causally related to the employment incident.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>2</sup> 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 that is alleged to have occurred. The second component is whether the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>3</sup>

The Office found that appellant had not established an incident as alleged on November 13, 2001 based on statements from appellant's supervisors regarding the exact location of the fall. According to a November 15, 2001 statement from David A. La Posta, a supervisor, appellant stated that the injury occurred at 15 or 17 Idlewild Road, but there was no house numbered 15 and no steps were found at 17 Idlewild Road. A November 15, 2001 statement from another supervisor, Leonard J. DeToma, Jr., indicated that inspection of the area revealed no hidden steps at 17 Idlewild Road.

It is well established that a claimant cannot establish fact of injury if there are 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.<sup>4</sup> The Board notes, however, that an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>5</sup>

Appellant submitted a statement indicating that at the time of the incident he was not completely sure of the address where the incident occurred; this was the first time he had been assigned to the route and the incident occurred after 5:00 p.m., when it was getting dark. He stated that the area where he fell was a single step covered by leaves. After receiving a November 26, 2001 letter from the Office, appellant had walked along the delivery route and realized the location was 18 Idlewild Road.

The Board notes that appellant notified his supervisor of the incident on November 13, 2001 and sought medical treatment on that date. A treatment note dated November 13, 2001 from a medical care center provides a history of a fall on that date, with physician findings on examination.

In view of the weight accorded to a claimant's statement as to an employment incident, the explanation provided regarding the location of the incident and the prompt notification of injury and medical treatment received, the Board finds that an employment incident on November 13, 2001 has been established.

In order to establish fact of injury, appellant must submit probative medical evidence on causal relationship between a diagnosed condition and the employment incident. The November 13, 2001 treatment note provides a diagnosis of lumbar radiculopathy and right knee contusion, without providing an opinion on causal relationship. In a form report (Form CA-16) dated December 4, 2001, Dr. Gary Misko, Jr., an internist, diagnosed contusion and lumbar strain. Dr. Misko checked a box "yes" that the condition was caused or aggravated by employment, without providing further detail. The checking of a box "yes" in a form report, without additional explanation or rationale, is generally not sufficient to establish causal

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<sup>3</sup> See *John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>4</sup> *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

<sup>5</sup> *Thelma Rogers*, 42 ECAB 866 (1991).

relationship.<sup>6</sup> While the Office has recognized that in certain “clear-cut” traumatic injuries, such as a fall from a scaffold with a broken arm, may require only an affirmative statement to establish causal relationship, this is not the situation presented here.<sup>7</sup>

In the absence of a reasoned medical opinion, based on an accurate factual and medical background, the Board finds that appellant did not meet his burden of proof in this case.

The decisions of the Office of Workers’ Compensation Programs dated August 28 and January 16, 2002 are modified to reflect an employment incident as alleged and affirmed as modified.

Dated, Washington, DC  
January 29, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d)(2) (June 1995).