

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANDRE D. CHEPAN and U.S. POSTAL SERVICE,
POST OFFICE, Elizabeth City, NC

*Docket No. 03-673; Submitted on the Record;
Issued May 5, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on September 20, 2002 as alleged.

Appellant, a 46-year-old letter carrier, filed a notice of traumatic injury on September 21, 2002 alleging that on September 20, 2002 he slipped on the steps at 507 East Main Street injuring both of his feet. On the reverse of the form, appellant's supervisor stated that appellant's injury could not have occurred as alleged. The employing establishment reported that 507 East Main Street was an empty parking lot and that this address was not part of appellant's assigned route on September 20, 2002.

In a letter dated October 3, 2002, the Office of Workers' Compensation Programs requested additional factual and medical evidence from appellant. Appellant asserted that on September 20, 2002 he delivered mail at 507 East Main Street and that he slipped on the second to the bottom step due to dust from nearby construction. Appellant stated that he injured both feet when he landed on the bottom step and that his feet began to swell and hurt.

In a report dated September 4, 2002, Dr. S. Michael Sutton, a Board-certified family practitioner, stated that while appellant was at work he came down a step and slipped off the step inverting his right ankle and jamming his left foot and ankle. He stated, "Apparently right after the accident happened his supervisor came up and reprimanded him as apparently he did not have the parking break engaged on his postal vehicle so currently he is on suspension also."

By decision dated December 2, 2002, the Office denied appellant's claim finding that he failed to submit sufficient factual evidence to establish that his injury occurred in the performance of duty.¹

The Board finds that appellant has failed to submit sufficient evidence to establish that his injury occurred in the performance of duty on September 20, 2002, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act 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."² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

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.⁴ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ 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.⁶ 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.⁷

In this case, appellant alleged that he slipped on stairs in the performance of duty injuring his feet. Appellant stated that he was delivering mail at 507 East Main Street on two statements to the employing establishment. Appellant provided this history of injury to Dr. Sutton, that he slipped on steps in the performance of his duties injuring his feet. However, the employing

¹ Following the Office's December 2, 2002 decision, appellant submitted additional evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal. 20 C.F.R. § 501.2(c).

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

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255-56.

establishment stated that 507 East Main Street was not a building, but an empty parking lot and that this address was not included on appellant's route on September 20, 2002.

At the time of the Office's December 2, 2002 decision, the record does not contain any evidence establishing that 507 East Main Street was a developed property, as appellant alleged, such that he could have slipped on stairs. The employing establishment stated that this address was an empty parking lot. Appellant has not submitted any evidence suggesting that he inadvertently listed the wrong address or in support of his contention that 507 East Main Street is a developed property. Furthermore, the Board notes that the employing establishment asserted that appellant would not have been in the performance of duty at the time his injury occurred as neither 507 East Main Street nor 507 West Main Street were part of appellant's assigned route on September 20, 2002.

As the employing establishment controverted appellant's history of injury and as appellant did not submit any further supportive evidence, the Board finds that appellant failed to meet his burden of proof in establishing that his September 20, 2002 injury occurred at the time, place and in the manner alleged and that he therefore failed to establish the first component of fact of injury. The Office, therefore, properly denied his claim.

The December 2, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
May 5, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member