U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN B. COLEY and U.S. POSTAL SERVICE,
POST OFFICE, Los Angeles, CA

Docket No. 03-2168; Submitted on the Record;
Issued November 12, 2003

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury to her left foot in the performance of duty.

On May 11, 2003 appellant, then a 37-year-old mail processing clerk, filed a notice of occupational disease and claim for compensation (Form CA-2), alleging that she sustained an injury when two bars from an all purpose container fell on her left foot. Appellant stated that she first became aware of her condition on December 14, 2002.[1] Appellant did not stop work.

In an attached statement of accident dated May 7, 2003, appellant noted that, on December 14, 2002, while she was disbursing mail, two bars from the all purpose container fell on her left foot. She indicated that the latch for the containers was defective. In a witness statement dated May 10, 2003, Avonne Simmons noted that on December 14, 2002 he was present when appellant was removing mail from the containers; however, he did not witness her injury but appellant informed him that she sustained an injury to her left foot on that day.

In a letter dated May 21, 2003, the Office advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence. The Office specifically requested that appellant clarify whether she was attributing her left foot condition to the incident of December 14, 2002 or whether she was attributing her condition to factors or incidents occurring over a period of time.

In response to the Office's request, appellant submitted a number of return to work certificates from August 11, 1998 to March 21, 2003 which noted that appellant could work subject to various restrictions for repetitive hand use, kneeling, squatting and twisting. In narrative statements dated November 16 and December 14, 2002, appellant attributed her left

[1] Although appellant filed a Form CA-2 notice of occupational disease, the Office of Workers' Compensation Programs appears to have developed the claim as a traumatic injury because appellant indicated that her left ankle injury occurred on December 14, 2002.

foot injury to an incident which occurred when two all purpose containers fell on her left foot on November 16, 2002; however, she did not wish to fill out an accident report at that time.

The employing establishment submitted a statement dated June 2, 2003 which noted that appellant operated a light mail zone with a partner for the past years and her history reflected that she was an accident repeater. The employing establishment disputed that appellant's left foot injury was the result of a November 16, 2002 incident at work and noted that appellant waited nearly seven months before seeking treatment for her left foot injury which was inconsistent with sustaining a foot injury serious enough to require a cast.

Thereafter, appellant submitted a narrative statement noting that her injury occurred on November 16, 2002 not December 14, 2002. She first noticed the injury on November 16, 2002 and experienced pain and swelling of her left foot and first sought treatment on December 9, 2002. Also submitted was documentation of medical impairment from Kaiser Permanente which noted that appellant was treated on May 2, 2003 for an ankle injury and was released to work with restrictions.

In a decision dated June 24, 2003, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on November 16, 2000 causally related to factors of her employment.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a left foot injury causally related to employment factors.

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 timely filed within the applicable time limitation period of the Act, that the 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 an 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]

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Elaine Pendleton*, *supra* note 2.

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

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]

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.[8] Although 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,[9] 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.[10]

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.[11]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[12]

In the present case, appellant alleged that she was injured when two bars from an all purpose container fell on her left foot. However, appellant did not stop work because of the alleged injury nor did she seek medical treatment for a period of six months. Once she did seek medical treatment, the initial treatment notes make no mention of an injury or employment-

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

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

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

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

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

[11] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[12] *James Mack*, 43 ECAB 321 (1991).

related condition. Also, there were no witnesses to the alleged incident, only a statement submitted by coworker Mr. Simmons, who indicated that he did not witness the actual incident. Although appellant presented a light-duty slip from her physician and was thereafter placed on light duty from March 23 to April 21, 2003, this appears to be for an unrelated condition as the restrictions address repetitive motion of the right and left hand and fail to mention a left foot injury. Additionally, appellant did not file an injury claim for over six months following the alleged incident and listed a date of injury of December 14, 2002 on the claim form and later changed this date indicating that the injury actually occurred on November 16, 2002. Moreover, the witness statement submitted by Mr. Simmons advised that the incident took place on December 14, 2002. These circumstances of late notification, lack of confirmation, continuing to work without difficulty cast serious doubt on appellant's *prima facie* claim.

As noted above, the medical evidence submitted by appellant does not support that the incident of November 16, 2002 occurred as alleged. The only medical record submitted was a document dated May 2, 2003 from Kaiser Permanente which noted that appellant was treated for an ankle injury, however, the report neither noted that appellant's ankle injury was work related or provide a history of the injury,[13] nor did he include a rationalized opinion regarding the causal relationship between appellant's ankle injury and the factors of employment believed to have caused or contributed to such condition.[14] Therefore, this report is insufficient to meet appellant's burden of proof.

While the Office requested that appellant explain these discrepancies and inconsistencies the record contains no such clarification. For these reasons, appellant has not met her burden of proof.

[13] *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

[14] *See supra* note 7.

The decision of the Office of Workers' Compensation Programs dated June 24, 2003 is affirmed.

Dated, Washington, DC
November 12, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member