United States Department of Labor
Employees' Compensation Appeals Board

DERRICK M. ENGELS, Appellant	)	
and	)	**Docket No. 03-1360**
	)	**Issued: June 3, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Grand Rapids, MI, Employer	)	

Appearances:
Alan M. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On April 21, 2003 appellant filed a timely appeal from the decision of the Office of Workers' Compensation Programs dated January 21, 2003. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review this decision.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

FACTUAL HISTORY

On December 2, 2002 appellant, then a 39-year-old mail carrier, filed a traumatic injury claim stating that on November 1, 2002 he twisted his right ankle while walking on his route. Appellant's supervisor, Garth Goodenow, checked the "yes" box that appellant was injured in the performance of duty "according to employee statement." He stated that appellant had a previous injury or aggravation from the armed forces.

On November 26, 2002 appellant requested light duty, stating that he was unable to walk or stand for long periods of time. On a medical certificate dated November 4, 2002 appellant's health care provider stated that appellant was unable to work from November 5 to 8, 2002, due to ankle pain and sprain. On another medical certificate dated November 12, 2002, the health care provider stated that appellant could not work through November 25, 2002, due to a right ankle injury he sustained "while working" and due to underlying degenerative joint disease.

On a form for the Family and Medical Leave Act dated July 15, 2002, a family practitioner whose name is illegible stated that an x-ray showed degenerative changes and joint space narrowing on an ankle x-ray. The physician stated that appellant's condition began more than 10 years ago after an injury and that appellant was able to work full time when the pain permits.

In a statement dated December 2, 2002, appellant stated that on November 1, 2002 he twisted his ankle while doing his route and informed "Val." Appellant stated that he also called attendance control and told them that he hurt his ankle and that the next available day he made an appointment with his physician.

By letter dated December 11, 2002, appellant's immediate supervisor, Valerie J. Portko, stated that it was not true that appellant told her that he injured his ankle on November 1, 2002. She stated that appellant had been complaining of his ankle "far before the incident in question, always stating it was a problem he had from being in the armed forces." Ms. Portko stated that appellant approached her sometime in November 2002, stating that he was probably going to have surgery on his ankle in January 2003, that he was expecting to be off work for approximately six to eight weeks until his ankle healed and might need modified work. She stated that appellant also did not report an injury to her on December 2, 2002.

By letter dated December 11, 2002, the employing establishment stated that appellant notified the attendance control office of his absences in November 2002 and when asked if the absences were due to a work-related injury, he said no.

By letter dated December 18, 2002, the Office requested additional information from appellant including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

In a duty status report dated December 11, 2002, a family practitioner whose name is illegible, diagnosed ankle sprain and restricted appellant to light-duty work for seven days. The physician indicated that on November 1, 2002 appellant slipped on grass and twisted his ankle.

A medical certificate dated January 3, 2003, indicated that appellant was unable to work from December 30, 2002 through January 2, 2003, due to ankle pain. The physician indicated that appellant sought treatment on January 3, 2003.

By decision dated January 21, 2003, the Office denied the claim, stating that appellant did not meet the requirements for establishing that his condition was caused by the employment factor. Initially, the Office considered the medical evidence consisting of medical certificates

dated July 15 and November 4 and 12, 2002. The Office noted that the July 15, 2002 medical certificate stated that appellant's ankle injury began 10 years earlier and the November 4 and 12, 2002 certificates was not fortified with a medical rationale explaining how the ankle sprain resulted from appellant's employment. The Office then considered that appellant's injury occurred on November 1, 2002 but appellant did not file an injury claim until December 2, 2002. The Office also considered that appellant's supervisor stated that he had been complaining about an ankle problem far before the incident of November 1, 2002 and that, was a problem he had been having from the armed forces. The Office stated that the information appellant submitted was not sufficient because it failed to establish how the accident, event or employment factor caused or contributed to his medical condition.

LEGAL PRECEDENT

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, an employee who claims benefits under the Federal Employees' Compensation Act has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[1] 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.[2]

An injury does not have to be confirmed by eyewitnesses 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 subsequence course of action.[3] 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 had been established.[4] An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to case serious doubt upon the validity of the claim.[5] However, an employee's statement alleged 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.[6]

[1] *Michelle Kunzwiler*, 51 ECAB 334, 335 (2000).

[2] *Id*.

[3] *Edward W. Malaniak*, 51 ECAB 280 (2000).

[4] *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987).

[5] *Tia L. Love*, 40 ECAB 586, 590 (1989).

[6] *Edward W. Malaniak*, *supra* note 3; *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

ANALYSIS

In its January 21, 2003 decision, the Office gave a confused analysis because it first decided that the medical evidence was not sufficient to establish a causal relationship between appellant's ankle condition and the alleged injury and then considered that the facts surrounding the alleged incident were inconsistent. The Office concluded that appellant did not meet the requirements for establishing that his condition was caused by an employment factor. The Office should have first addressed, however, the question of whether the evidence established that the incident occurred at the time, place and in the manner alleged.

Appellant has submitted sufficient evidence to establish that he sustained an injury to his ankle at work on November 1, 2002 as alleged. On his claim form dated December 2, 2002, appellant stated that the incident of his twisting his right ankle at work occurred on November 1, 2002. His supervisor, Mr. Goodenow, indicated by checking the "yes" box on the claim form that the incident occurred at work in accordance with appellant's statement and added that appellant had a previous injury or aggravation from the armed forces. In his December 2, 2002 statement, appellant stated that he informed his immediate supervisor, Ms. Portko, on November 1, 2002 that he twisted his ankle doing his route. Although Ms. Portko denied that appellant told her that he injured his ankle on November 1, 2002 and stated that he had "always" said that his ankle problem was from being in the armed forces, her statements do not refute that appellant injured his ankle on November 1, 2002.

Appellant also stated that on November 1, 2002 he called attendance control and told them that he hurt his ankle. The attendance control office stated that appellant notified them of his absences in November 2002, although he denied the absences were work related. The medical certificates dated November 4 and 12, 2002, indicated that appellant sustained an injury to his ankle at work although they do not specify the date. In the December 11, 2002 duty status report, a family practitioner diagnosed ankle sprain and indicated that on November 1, 2002 appellant slipped on grass and twisted his ankle. Appellant's and Mr. Goodenow's statements on the claim form support that the November 1, 2002 ankle injury occurred. The December 11, 2002 duty status report also corroborates appellant's account of the incident. Although some of the evidence shows that appellant had a preexisting ankle condition or is vague about the date of the injury, no evidence of record contradicts that the November 1, 2002 injury to appellant's ankle occurred as alleged.

CONCLUSION

The Board finds that appellant has established that he sustained an injury to his ankle on November 1, 2002 at work. It is, therefore, necessary to remand the case for the Office to address whether appellant sustained any period or periods of disability as a result of the November 1, 2002 employment-related ankle injury.

ORDER

IT IS HEREBY ORDERED THAT the January 21, 2003 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision.

Issued: June 3, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member