U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEON W. ORR and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, Ill.

Docket No. 96-2422; Submitted on the Record;
Issued August 26, 1998

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on March 21, 1996 as alleged.

On April 5, 1996 appellant, then a 40-year-old clerk carrier, filed a claim for a traumatic injury alleging that on March 21, 1996, he reinjured his back while lifting tubs of mail. Appellant stopped work on that day.

In support of his claim, appellant submitted a medical report dated March 21, 1996 from Dr. Jack G. Casini, appellant's treating physician and a Board-certified orthopedic surgeon. He stated that he had examined appellant that day based on his alleged acute onset of back pain. Dr. Casini noted that appellant refused to have x-rays taken of his back at that time. Based on a physical examination, he indicated that appellant had "probable disc protrusion," and ordered him off work for at least two weeks.

In a statement dated April 15, 1996, appellant's coworker stated that on March 21, 1996 appellant told him that he felt sick, asked his coworker to inform the supervisor, and left for the day. Another coworker reported essentially the same information in a statement dated the same day.

By letter dated May 7, 1996, the Office of Workers' Compensation Programs requested detailed information from appellant. The Office advised appellant of the type of factual and medical evidence necessary to establish his claim. Appellant was also asked why he waited from March 21 to April 5, 1996 to report his injury, why he reported that he was feeling sick on March 21, 1996, and why he refused to have x-rays taken by his treating physician on that day.

In a statement received by the Office on May 13, 1996, appellant asserted that he attempted to report the injury on March 21, 1996 stating that "my employer was called that day from my office but couldn't be located," and that a second call was made "directly from doctor's

office speaking with employer to explain what happened." Appellant denied refusing to have x-rays taken on March 21, 1996, noting that his physician said that he wanted to review earlier x-rays prior to taking additional ones.

In a decision dated June 14, 1996, the Office denied appellant's claim for failure to establish fact-of-injury.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim.[2] When a claim for compensation is based on a traumatic injury, the employee must establish the fact of injury by proof of an accident or fortuitous event having relative definiteness with respect to time, place and circumstance and having occurred in the performance of duty, and by proof that such accident or fortuitous event caused an "injury" as defined in the Act and its regulations.[3]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, 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 a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[4] However, an employee's statement 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.[5]

Appellant stated that he was injured on March 21, 1996 when he was lifting tubs full of mail. However, appellant presented no reliable, probative or substantial evidence that the incident occurred as alleged. Indeed, appellant's coworkers stated that he advised them that he was sick on March 21, 1996 and that he was signing out for the day. The record therefore contains no evidence from any witnesses that the alleged incident occurred or that appellant notified anyone that such an incident occurred. In fact, two coworkers stated that appellant left the workplace on March 21, 1996 because he alleged he was sick. Neither worker indicated that appellant told them of his alleged injury. Although appellant saw his physician that day for an alleged acute onset of back pain, Dr. Casini did not submit a rationalized medical opinion which would establish a causal relationship between an injury that day and appellant's medical condition. Indeed the record reveals that appellant declined to have x-rays taken which would have contributed to a comprehensive and contemporaneous evaluation of appellant's alleged

[1] 5 U.S.C. § 8101 *et seq.*

[2] *See Margaret A. Donnelley*, 15 ECAB 40 (1963).

[3] *See Loretta Phillips*, 33 ECAB 1168, 1170 (1982); *Virgil M. Hilton*, 32 ECAB 447, 452 (1980); *Max Haber*, 19 ECAB 243, 247 (1967).

[4] *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

[5] *Linda S. Christian*, 46 ECAB 598 (1995).

injury. Further, appellant failed to file his claim for over two weeks after the alleged incident and did not provide a rational explanation for the time lag. His allegation that he attempted to notify the employing establishment on the day of the incident is not supported by the record.

The Board finds that the inconsistencies in the evidence described above cast serious doubt upon the validity of appellant's claim. Appellant has not met his burden of proof.

The decision of the Office of Workers' Compensation Programs dated June 14, 1996 is affirmed.

Dated, Washington, D.C.
August 26, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member