U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FELICIDAD C. BARLAN and U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, Calif.

Docket No. 97-891; Submitted on the Record;
Issued November 4, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS, WILLIE T.C. THOMAS

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

The Board has duly reviewed the case record and finds that appellant did not sustain an injury in the performance of duty, as alleged.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[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]

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 surrounding facts and circumstances and his or her 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 serious doubt on a claimant's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[3] 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.[4]

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[1] *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

[2] *Id.*

[3] *Linda S. Christian*, 46 ECAB 598, 600-01 (1995); *Carmen Dickerson*, 36 ECAB 409, 415 (1985).

[4] *Linda S. Christian*, *supra* note 3 at 601; *Virgil F. Clark*, 40 ECAB 575, 584-86 (1989).

On August 2, 1996 appellant, then a 43-year-old distribution clerk, filed a claim for a traumatic injury, Form CA-1, alleging that on the first week of April 1996 she sustained a low back or lumbosacral strain as a result of carrying heavy flats and pushing a heavy hamper. Appellant missed work from July 16 to July 23, 1996. A light-duty request dated May 10, 1996 from Kaiser Permanente showed that appellant first sought medical treatment for low back pain on May 10, 1996. A certificate of injury or illness from Kaiser Permanente dated July 19, 1996 stated that appellant was treated by Dr. Abid Haq, an internist, on July 19, 1996 for a lumbosacral strain and was placed on light duty until August 5, 1996. In a report dated August 13, 1996, Dr. David Potyk, a Board-certified internist, on behalf of Dr. Haq, stated that appellant was seen on July 19, 1996 for low back pain which was "recently exacerbated after lifting heavy weight at work and bending over." He noted, "[s]een initially with complaint of low back pain, (April 1, 1996 at work, postal worker)" and that appellant stated that she reinjured her back. Dr. Potyk diagnosed work-related lumbosacral strain exacerbation. On August 23, 1996 Dr. Potyk stated that appellant was seen on May 10, 1996 for her work-related lumbar strain and could return to full duties on September 10, 1996. Physical therapy notes dated August 23, 1996 stated that appellant was initially seen on May 10, 1996 for her work-related lumbar strain. In a report dated September 9, 1996, Dr. Potyk stated that appellant had a history of low back pain at work. By letter dated September 11, 1996, the Office of Workers' Compensation Programs requested additional information from appellant regarding the circumstances of his alleged employment injury.

By decision dated September 26, 1996, the Office denied the claim, stating that appellant did not meet her burden of proving that the injury occurred at the time, place and in the manner alleged.

The Board finds that appellant has not established that the employment incident occurred at the time, place and in the manner alleged. Although there does not have to be witnesses to the occurrence of the alleged injury, there must be some supporting evidence.[5] The documents from Kaiser Permanente dated May 10 and July 19, 1996 document that appellant first sought medical treatment for her low back on May 10, 1996, was diagnosed as having a lumbosacral strain and was placed on light duty until August 5, 1996. They do not, however, relate appellant's back condition to her employment. Further, no reference was made to appellant's back injury being work related until August 13, 1996 when Dr. Potyk stated in his report of that date that appellant was seen on July 19, 1996 for low back pain which was recently exacerbated after lifting heavy weight at work and bending over. Dr. Potyk did not describe a specific date that the exacerbation occurred and merely typed a note that appellant initially complained of low back pain, "(April 1, 1996 at work, postal worker)" which does not explain what happened to appellant at work. The physical therapy notes dated August 23, 1996 do not describe how appellant's back injury occurred. Dr. Potyk's September 9, 1996 report does not describe what he meant by his statement that appellant had a history of low back pain at work. None of the evidence appellant submitted is sufficiently clear or detailed so as to corroborate that appellant's injury to her back occurred the first week of April 1996 as alleged.[6]

[5] *Linda S. Christian*, *supra* note 3 at 600-01.

[6] The record contains medical reports and documents which were submitted after the Office's September 26,

The decision of the Office of Workers' Compensation Programs dated September 26, 1996 is hereby affirmed.

Dated, Washington, D.C.
November 4, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

1996 decision. The Board's jurisdiction, however, is limited to reviewing the evidence and arguments that were before the Office at the time of its final decision. 20 C.F.R. § 501.2(c); *Lloyd E. Griffin*, 46 ECAB 979, 982 n.6 (1995). Therefore, the Board may not consider the evidence in the record submitted after the Office's September 26, 1996 decision. This includes appellant's letter received by the Office on September 26, 1996 which apparently was received after the Office's decision was issued as the Office stated in its decision that it did not receive any response to its September 11, 1996 letter requesting additional information.