U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MAE C. CAMPBELL and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, Ill.

Docket No. 96-2678; Submitted on the Record;
Issued September 18, 1998

DECISION and ORDER

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

The issue is whether appellant met her burden of proof in establishing that she sustained an injury causally related to factors of employment.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not establish that she sustained an injury in the performance of duty.

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] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[3] that the claim was timely filed within the applicable time limitation period of the Act,[4] 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.[5] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether an 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, the employee must submit sufficient evidence to establish that he or she actually experienced the

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[1] 5 U.S.C. §§ 8101-8193.

[2] *See Daniel R. Hickman*, 34 ECAB 1220 (1983); *see also* 20 C.F.R. § 10.110.

[3] *See James A. Lynch*, 32 ECAB 216 (1980); *see also* 5 U.S.C. § 8101(1).

[4] 5 U.S.C. § 8122.

[5] *See Melinda C. Epperly*, 45 ECAB 196 (1993).

[6] *See Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

employment incident at the time, place and in the manner alleged.[7] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[8] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[9]

The Office of Workers' Compensation Programs cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged, or whether the alleged injury was in the performance of duty.[10] Nor can the Office find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of the Act. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action.[11] However, 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.[12] 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 cast doubt on an employee's statements in determining whether he or she has established his or her claim.[13] Further, the mere occurrence of an episode of pain during the workday is not proof of an injury having occurred at work, nor does it warrant an inference of causal relationship.[14]

The facts in this case indicate that on September 26, 1995 appellant, then a 47-year-old occupational health nurse, filed an occupational disease claim, alleging that excessive walking at work caused a fracture of her right fifth toe. She did not stop work. In a November 24, 1995 statement, she advised that excessive walking and extreme heat at work caused pain and swelling of her right little toe. By decision dated January 18, 1996, the Office denied the claim on the grounds that appellant failed to establish that an injury was sustained as alleged. On February 20, 1996 appellant requested reconsideration and submitted additional medical evidence. By decision dated June 5, 1996, the Office declined to modify the prior decision,

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

[8] *Id*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[9] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e*., a physical impairment resulting in loss of wage-earning capacity; *see Frazier V. Nichol*, 37 ECAB 528 (1986).

[10] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[11] *See Gene A. McCracken*, 46 ECAB 593 (1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

[12] *Thelma Rogers*, 42 ECAB 866 (1991); *Constance G. Patterson*, 42 ECAB 206 (1989).

[13] *See Joseph H. Surgener*, *supra* note 11; *Constance G. Patterson*, *supra* note 12.

[14] *See Max Haber*, 19 ECAB 243 (1967).

finding that the medical evidence failed to establish a causal relationship between employment factors and appellant's condition.

The relevant medical evidence includes a September 1, 1995 report in which David Finkelstein, D.P.M., diagnosed possible fracture of the right fifth toe and advised that appellant should avoid excessive walking. In a September 11, 1995 report, he advised that she could return to regular duties. In a February 16, 1996 report, Dr. Finkelstein advised that x-ray indicated that appellant had regrowth of bone of her little toe and had not sustained a fracture.[15]

In the present case, there is no dispute that appellant was a federal employee and that she timely filed a claim for compensation benefits. However, the medical evidence is insufficient to establish that she sustained an employment-related injury because it does not contain a rationalized medical opinion explaining how her toe condition was caused or aggravated by employment factors. While appellant submitted reports from her treating podiatrist Dr. Finkelstein, his reports are void of an opinion regarding the cause of appellant's condition. Consequently, appellant has not submitted sufficient medical evidence to establish that her toe condition was causally related to factors of employment.[16]

The decisions of the Office of Workers' Compensation Programs dated June 5 and January 18, 1996 are hereby affirmed.

Dated, Washington, D.C.
September 18, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

[15] Appellant also submitted medical evidence pertaining to a sprain of the right foot in 1988 and that she had a bone removed from the right little toe in 1992.

[16] The Board notes that appellant submitted evidence to the Board with this appeal. The Board, however, cannot consider this evidence as its review of the case is limited to the evidence of record which was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).