

On December 23, 2003 appellant, then a 34-year-old part-time flexible city carrier, filed a traumatic injury claim alleging that on November 28, 2003 at approximately 7:00 p.m., she sustained a right ankle injury while moving a power jack machine.

On December 16, 2003 Dr. Adeebur Rahman, Board-certified in internal medicine and appellant's attending physician, stated that appellant was under his care for a contusion of the left ankle and foot from December 12 to 21, 2003, and that she was released to full duty without restrictions on December 22, 2003.

In a report dated December 23, 2003, Bobby E. Reece, appellant's supervisor, stated that appellant reported for duty on 10:00 am on Saturday, November 29, 2003, and worked a full day with no report of injury on the prior day. She then took sick leave on December 1, 2003 emergency annual leave on December 3, 2003 and emergency leave without pay on December 4 and 5, 2003. She worked a full shift on December 8, 10 and 11, 2003, requested sick leave for 8 hours on December 12, 2003, leave without pay on December 15, 2003, and 40 hours of sick leave from December 17, 2003. Appellant told Mr. Reece and another supervisor that she hurt herself operating a power jack, however, no power jack was in use on that date. Appellant advised yet a third supervisor that she injured herself while operating an all-purpose container. She did not specify the date of the alleged incident.

In a report dated December 23, 2003, Sherry Lucas, a supervisor, stated that appellant advised her on that day that she hurt her left ankle pulling an all-purpose cart "sometime at the end of November." Appellant then demonstrated how she injured her ankle using a pallet lifter. On December 23, 2003 Gilbert Chaney, a coworker, stated that he did not see appellant hurt herself on November 28, 2003 and that she did not inform him that she sustained an injury. He also stated that he did not see appellant operate a pallet lifter that day. Another coworker, Larry Lane, noted in a December 23, 2003 statement that, on November 28, 2003, he noticed that appellant walked with a limp as she arrived for work at 11:00 am and that she did not comment on the cause of the limp.

Appellant provided a narrative report stating that on November 28, 2003 she hit her right ankle on a power jack machine while trying to push it to the dock. She stated that she was trying to determine how to use the machine when she hit her ankle against something causing her to jump back. Appellant then stated that she asked an employee¹ to help her move the machine and also advised her supervisor that night about her injury. Appellant saw her physician who ordered x-rays and placed her off work until December 22, 2003.

By letter dated January 5, 2004, the Office informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

In a report dated January 12, 2004, Dr. Yemi Adeyemi, a general practitioner, stated that appellant was released to return to restricted duty on January 13, 2004, noting that she sustained a left ankle injury without fracture.

By decision dated February 11, 2004, the Office denied appellant's claim for compensation on the grounds that the evidence failed to establish that the claimed medical condition was causally related to the accepted November 28, 2003 event.

¹ Appellant apparently was referring to Mr. Chaney.

On March 12, 2004 appellant requested a review of the written record. In support of her request, appellant submitted a December 1, 2003 report of hospital discharge instructions noting a left ankle deep bruise contusion, and a report dated December 4, 2003, Dr. Rahman which stated that appellant had a left ankle contusion and was released to return to work on December 8, 2003 with no restrictions.

In a report dated February 2, 2004, Dr. Richard N. Egwele, a Board-certified orthopedic surgeon and appellant's attending physician, stated that a power trolley ran over her left ankle causing pain of several months duration. He noted tenderness along the posterior tibialis tendon sheath, and pain on eversion and contraction. Dr. Egwele diagnosed tenosynovitis of the left posterior tibialis and maintained her job restrictions. On February 4, 2004 Dr. Rahman stated that appellant had tenosynovitis of the left ankle and was not able to perform regular duties until her next appointment which was scheduled two weeks hence.

In a February 10, 2004 synopsis of a December 1, 2003 hospital report, appellant related that she injured her left ankle at work on Friday, November 30, 2003, but that it did not bother her until the next day, Saturday, December 1, 2003 at which time she went to the emergency room for treatment. The diagnosis was left ankle pain and she was released to return to full duty on December 2, 2003.²

On February 16, 2004 Dr. Egwele reported appellant's complaint of weakness in her left foot but that the left ankle tenosynovitis had resolved and that she had full and painless range of motion with weak motor controls and a normal gait. He maintained her on restricted duty.

In a report dated February 17, 2004, Dr. Rahman stated that x-rays and a magnetic resonance imaging (MRI) scan were negative for a left foot fracture. On March 1, 2004 Dr. Egwele stated that appellant's left ankle tenosynovitis had resolved and maintained her on restricted duty for a week followed by full duty.

The record includes an employing establishment memorandum of interview with appellant dated February 5, 2004, and an investigative memorandum dated February 19, 2004. These reports summarize appellant's conduct in filing her December 23, 2003 CA-1 form for the November 28, 2003 alleged work-related injury. The investigative memorandum summarized findings of fact relating to the claim and appellant's statements concerning her right ankle and the medical evidence which noted a left ankle condition. On March 1, 2004 the employing establishment notified appellant that she would be removed from employment no sooner than 30 days from that date based on their finding that she fraudulently filed the December 23, 2003 CA-1 form.

In a decision dated July 30, 2004, the hearing representative affirmed as modified the Office's February 11, 2004 decision denying appellant's claim. The hearing representative found that appellant had not established an injury in the performance of duty due to factual inconsistencies in the description of her alleged employment incident.

² The report is ambiguous in that it released her to work on December 2, 2003 but also stated she could return to work in three days. It also noted that December 1, 2003 was a Monday when it was a Saturday.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employee's Compensation Act³ 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 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.⁵ In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment incident or exposure at the time, place and in the manner alleged.⁶

Second, the employee must submit sufficient evidence, generally in the form of medical evidence to establish that the employment incident caused the personal injury.⁷

ANALYSIS

Regarding the first component, the Office hearing representative found the evidence of record insufficient to establish that appellant sustained an injury at the time, place and in the manner alleged. An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. 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 sufficient doubt on an employee's statements in determining whether she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when

³ 5 U.S.C. §§ 8101-8193.

⁴ *Gabe Brooks*, 51 ECAB 184 (1999).

⁵ *See Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Michael W. Hicks*, 50 ECAB 325 (1999).

⁷ *Gloria J. McPherson*, 51 ECAB 441 (2000).

there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸

In this case, appellant did not provide sufficient evidence to establish the first component of fact of injury, that is, that the employment incident occurred at the time, place and in the manner alleged. Appellant originally asserted in her traumatic injury claim form that on November 28, 2003 she injured her right ankle while moving a power jack machine in the performance of duty. However, appellant provided differing accounts of her claimed injury to two supervisors on December 23, 2003; she related to one that she injured herself while pulling on an all purpose cart while she informed the other supervisor that she was injured while operating a power jack. Also, coworker statements do not corroborate appellant's version of how the claimed injury occurred. Although appellant stated that she notified a fellow worker that she injured herself moving the power jack machine, no worker agreed with this account, and in fact an employee who worked with her on November 28, 2003 stated that he did not see appellant injure herself, he did not see her operate a machine, and that she not notify him that she had indeed sustained an injury on that date. Another employee stated that he observed her walking into the Office with a limp at 11:00 a.m., eight hours before appellant alleged she injured her ankle.

Likewise, there are no contemporaneous medical records noting a history of injury consistent with that provided by appellant.

Consequently, the Board finds that there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim such that appellant has not met her burden of proof in establishing that the claimed injury occurred at the time, place and in the manner alleged.

CONCLUSION

As there are inconsistencies in the history of injury, the Board finds that appellant failed to submit the necessary factual evidence to establish that an employment injury occurred on November 28, 2003 at the time, place and in the manner alleged.

⁸ *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 30, 2004 is affirmed.

Issued: April 14, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member