United States Department of Labor
Employees' Compensation Appeals Board

J.C., Appellant	)	
and	)	**Docket No. 06-907**
	)	**Issued: October 30, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Akron, OH, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 9, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated October 14, 2005, which found that appellant did not sustain an injury in the performance of duty.[1] Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty on August 21, 2005

[1] The record also contains a March 20, 2006 Office of hearing representative's decision, which affirmed the October 14, 2005 decision. However, the Office and the Board may not have simultaneous jurisdiction over the same issue in the same case. Following the docketing of an appeal with the Board, the Office does not retain jurisdiction to render a further decision regarding a case on appeal until after the Board relinquishes its jurisdiction. Any decision rendered by the Office on the same issues for which an appeal is filed is null and void. *Jacqueline S. Harris,* 54 ECAB 139 (2002).

FACTUAL HISTORY

On August 26, 2005 appellant, then a 49-year-old mail handler, filed a traumatic injury claim alleging that on August 21, 2005 he injured his left leg, which "cracked" while towing mail during a "hook up" in the performance of duty. He stopped work on August 23, 2005. The employing establishment controverted the claim and indicated that, on August 21, 2005, appellant called into the automated system and reported "off work on nonjob-related unscheduled leave." The employing establishment explained that appellant followed instructions for a nonjob-related injury and instructed employees to contact their supervisor if their condition was job related. The employing establishment noted that despite his allegation that he "did n[o]t remember what the automated instructions told him to do," appellant was an "accident repeater" and was "well versed on the procedures and requirements for reporting a job-related injury or illness, yet failed to do so."

By letter dated September 9, 2005, the Office advised appellant that additional factual and medical evidence was needed. The Office asked that appellant address factual inconsistencies and also that he submit a physician's opinion on causal relationship.

In a September 9, 2005 report, Dr. Phillip Lewandowski, a Board-certified orthopedic surgeon, noted that, on August 21, 2005, appellant was working as a "tow motor operator" for the employing establishment when he was "hooking up a tow motor and sustained a direct blow to his knee. It was associated with a pop and significant swelling." Dr. Lewandowski advised that appellant was on a knee immobilizer and on crutches. He determined that appellant had an anterior cruciate ligament tear and recommended proceeding with a magnetic resonance imaging (MRI) scan. In a disability slip dated September 9, 2005, Dr. Lewandowski opined that appellant was incapacitated until October 3, 2005. A September 15, 2005 MRI scan of the left knee was read by him. It revealed bone bruising involving the proximal tibia and distal femur, a possible depressed fracture of the lateral femoral condyle, a posterior cruciate ligament tear and signal alteration with the anterior cruciate ligament and medial collateral ligament suggesting at least ligamentous strains and a globular tear involving the posterior horn of the medial meniscus.

In an August 23, 2005 disability certificate, Dr. Steven Holsenback, Board-certified in emergency medicine, discharged appellant and advised that he could return to work in three days.

In a September 27, 2005 report, Dr. Michael R. Magoline, a Board-certified orthopedic surgeon, noted that appellant related a history of injury which included that on August 21, 2005 he was at work and struck his left knee while working on a tow motor.

The Office also received a report from a physical therapist which contained a history of injury indicating that on August 21, 2005 appellant was trying to add an apparatus to a tow motor and felt a "pop."

By decision dated October 14, 2005, the Office denied appellant's claim on the grounds that he did not establish an injury as alleged. The Office found that the evidence did not demonstrate that a specific event, incident or exposure occurred at the time, place and in the

manner alleged. The Office noted that appellant alleged that the injury occurred on August 21, 2005; however, the employing establishment indicated that appellant reported off-work on that date and he did not provide any evidence to support that he was at work. The Office also noted that there were inconsistent accounts of the alleged work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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[3] and that an injury was sustained in the performance of duty.[4] These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.[6] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[7] 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.[8]

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[9] A consistent history of the injury as reported on medical reports to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[10] Such circumstances as late notification of injury, lack of confirmation of injury,

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *James E. Chadden Sr.*, 40 ECAB 312 (1988).

[5] *Delores C. Ellyet*, 41 ECAB 992 (1990).

[6] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

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

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

[9] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[10] *Id*. at 255-56.

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 has been established.[11] Although 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] an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.[13]

ANALYSIS

The Board finds that appellant has not established fact of injury due to inconsistencies in the evidence that cast serious doubt as to whether the alleged August 21, 2005 traumatic incident occurred at the time, place and in the manner alleged. Appellant alleged on the claim form that, on August 21, 2005, he sustained an injury to his left leg which "cracked" during a "hook up" of a tow motor. However, the employing establishment controverted the claim, stating that he called into the automated system and reported "off-work on nonjob-related unscheduled leave." The employing establishment challenged the fact that appellant was on the premises on the date in question as they indicate that he called in to report a nonjob-related injury.

The Board notes that the medical histories are also inconsistent. Appellant submitted medical reports which indicate that he sustained an injury on August 21, 2005; however, they contain varying descriptions of the alleged incident. For example, Dr. Lewandowksi advised that, on August 21, 2005, appellant was working as a "tow motor operator" and was hooking up a tow motor when he sustained a direct blow to his knee. Dr. Magoline indicated that appellant was at work and struck his left knee while working on the tow motor. A physical therapist indicated that appellant "felt a pop" while trying to add an apparatus to a tow motor. Appellant failed to submit sufficient evidence to explain the discrepancies in this case. The Board finds that there are questions as to whether he was actually at work on the date in question, and various accounts of how an injury occurred. When requested by the Office in its September 9, 2005 letter to provide additional factual evidence, appellant did not provide any explanation regarding these inconsistencies.

The circumstances of this case, therefore, cast serious doubt upon the occurrence of an August 21, 2005 incident in the manner as described by appellant. Given the inconsistencies in the evidence regarding how he sustained his injury, the Board finds that there is insufficient evidence to establish that appellant sustained a traumatic incident in the performance of duty as alleged.[14]

[11] *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

[12] *Id.*

[13] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

[14] *See Matthew B. Copeland*, 6 ECAB 398, 399 (1953) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty); *see also Mary Joan Coppolino*, 43 ECAB 988 (1992).

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 14, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 30, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board