

**United States Department of Labor
Employees' Compensation Appeals Board**

A.W., Appellant

and

**U.S. POSTAL SERVICE, SPARTA POST
OFFICE, Sparta, NJ, Employer**

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**Docket No. 08-2295
Issued: June 4, 2009**

Appearances:

Alan J. Shapiro, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 21, 2008 appellant, through counsel, filed a timely appeal from a July 22, 2008 merit decision of the Office of Workers' Compensation Programs denying his claim for an injury in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an injury on September 24, 2007, as alleged.

FACTUAL HISTORY

On June 12, 2008 appellant, then a 50-year-old distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on September 24, 2007 he lost his balance while pushing a large swinging door and was pushed backward by the door, injuring both legs. At the time, he was on light duty due to a prior work-related left knee injury and was using an ambulatory cane. In a statement accompanying the claim form, appellant related that at approximately 10:35 a.m. he

left the employing establishment premises through double doors. He forgot something and tried to push the doors open to go back into the building. While holding his cane and lunch box, appellant tried to reopen the door, but lost his footing and fell to the floor. He hurt his knee and required assistance. An ambulance was called and arrived 15 minutes later. Appellant was transported to the hospital, where he was treated and released the same day. On the reverse of the claim form, appellant's supervisor, Mary Lou Puccia, Supervisor of Customer Service, stated that she did not witness the alleged employment incident and was controverting the claim on behalf of the employing establishment.

By letter dated June 12, 2008, the employing establishment submitted several statements from Postmaster Chuck Fantasia, dated September 4, 5 and 12, 2007. Postmaster Fantasia alleged that appellant was unhappy that he had returned to work after being totally disabled, warned that something was going to happen and stated that if he fell he would be covered under workers' compensation. The employing establishment submitted a witness statement from one of appellant's coworkers, whose signature is illegible, dated September 24, 2007 which was substantially similar to that of the postmaster's regarding appellant's statement that something was going to happen and that he would be covered under workers' compensation if it did. Additionally, Ms. Puccia submitted an undated routing slip reiterating appellant's account of the alleged September 24, 2007 employment incident, with the exception that the incident occurred at approximately 10:52 a.m.

Appellant submitted a witness statement dated September 24, 2007 from Brian S. Dykrasta, who stated that he was outside the door at approximately 10:45 a.m. when appellant came to the door. Mr. Dykrasta stated that he spoke and turned away and that, when he came back in the door, appellant was lying on the floor.

In a work capacity evaluation dated May 5, 2008, Dr. Carl B. Weiss, a Board-certified orthopedic surgeon, stated that appellant was status post total left knee arthroplasty and provided work restrictions to last one month.

By letter dated June 18, 2008, the Office advised appellant of the deficiencies in his claim and notified him that he was required to submit a medical report containing a diagnosis of his condition and a physician's opinion as to the cause of his condition.

In a June 25, 2008 e-mail, the postmaster reported that appellant provided updated medical documentation and had stated that when he got his money his knee would feel better and that his knee felt so great he felt like running. He stated that these comments were overheard by appellant's supervisor.

By decision dated July 22, 2008, the Office denied appellant's claim for fact of injury, finding that appellant did not submit any medical evidence to establish that he sustained a work-related injury due to the alleged incident. It noted that the September 24, 2007 witness statement by Mr. Dykrasta supported the factual aspects of the claim.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence,² including that he is an "employee" within the meaning of the Act³ and that he filed his claim within the applicable time limitation.⁴ The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁵

To establish fact of injury in a traumatic injury case it is not sufficient for an employee merely to establish that an employment event, incident or accident occurred in the performance of duty at the time, place and in the manner alleged. The employee must also establish that the employment event or incident caused an "injury" within the meaning of the Act and the regulations promulgated thereunder.⁶

ANALYSIS

The Office accepted that appellant fell on September 14, 2007 while in the performance of duty. Thus, the issue is whether appellant submitted sufficient medical evidence to establish that the September 24, 2007 employment incident resulted in an injury.

The only medical evidence submitted by appellant was a May 5, 2008 work capacity evaluation form from Dr. Weiss, who he provided work restrictions and noted that appellant was status post left knee arthroplasty. However, Dr. Weiss did not provide any history of the September 24, 2007 incident or explain the reason for providing the work restrictions beyond the fact that appellant underwent left knee arthroplasty. He failed to state why appellant underwent the surgery or whether the need for the surgery was employment related. As Dr. Weiss failed to address the causal relationship between appellant's condition and the accepted incident the Board finds this evidence to be of diminished probative value.⁷

Appellant was notified by Office letter dated June 18, 2008 that he was required to provide medical evidence containing a diagnosis and a physician's opinion regarding the cause of his injury. He failed to submit sufficient medical evidence to rectify the deficiencies in his

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB ____ (Docket No. 07-1159, issued November 15, 2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *See M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951); *see* 5 U.S.C. § 8101(1).

⁴ *R.C.*, 59 ECAB ____ (Docket No. 07-1731, issued April 7, 2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954); *see* 5 U.S.C. § 8122.

⁵ *G.T.*, 59 ECAB ____ (Docket No. 07-1345, issued April 11, 2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Elaine Pendleton*, *supra* note 5.

⁷ *See id.* *See also Michael E. Smith*, 50 ECAB 313 (1999).

claim. While appellant told Ms. Puccia that he was transported to a hospital following his fall on September 24, 2007, he did not submit any medical evidence pertaining to this visit or any subsequent treatment he obtained following to the work incident.

Therefore, the Board finds that appellant failed to provide sufficient medical evidence to establish that he sustained an injury resulting from the September 24, 2007 employment incident.

CONCLUSION

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on September 24, 2007, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 22, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 4, 2009
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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