U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ORLAN J. JACOBS and U.S. POSTAL SERVICE,
POST OFFICE, Sheldon, Iowa

Docket No. 97-34; Submitted on the Record;
Issued December 10, 1998

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury in the performance of duty on April 19, 1994 as alleged.

The Office of Workers' Compensation Programs accepted that appellant sustained a chronic lumbar strain while changing a tire on his postal vehicle on June 13, 1988. He received compensation for temporary total disability from June 14, 1988 until he returned to work as a modified rural carrier for four hours per day on January 12, 1991.[1] The Office determined that this position represented his wage-earning capacity and began paying him compensation based on his ability to work in this position for 20 hours per week.

On April 19, 1994 appellant filed a claim for an injury to his low back sustained on that date when a wheel of his chair caught in a hole and he fell from the chair. By decision dated August 10, 1994, the Office found that appellant had not established that he sustained an injury on April 19, 1994, as there were no physical objective findings and no definitive diagnosis. By decisions dated October 17, 1994, November 30, 1995 and August 7, 1996, the Office refused to modify this decision.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing the essential elements of his or her claim[3] including the fact that the individual is an "employee of the United States" within the meaning of the Act,[4] that the claim was timely filed within the applicable time limitation period of the Act,[5] that an injury was

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[1] At the time of his June 13, 1988 employment injury, appellant was working at the employing establishment in Ireton, Iowa. His return to work on January 12, 1991 was to the employing establishment in Sheldon, Iowa.

[2] 5 U.S.C. §§ 8101-8193.

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

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

[5] 5 U.S.C. § 8122.

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.[6]

Establishing whether an injury, traumatic or occupational, was sustained in the performance of duty as alleged, *i.e.*, "fact of injury," and establishing whether there is a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed, *i.e.*, "causal relationship," are distinct elements of a compensation claim. While the issue of "causal relationship" cannot be established until "fact of injury" is established, acceptance of fact of injury is not contingent upon an employee proving a causal relationship between the injury and any disability and/or specific condition for which compensation is claimed. 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.[7]

To accept fact of injury in a traumatic injury case, the Office, in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Act, as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.[8] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[9]

The Board finds that appellant sustained an injury in the performance of duty on April 19, 1994 as alleged.

There is no question that appellant was an employee of the United States on April 19, 1994, or that he timely filed a claim for an injury allegedly sustained on that date. Although the Office's decisions did not explicitly find that the April 19, 1994 incident occurred as alleged, the evidence establishes that it did. There was a statement from a witness who heard a bang, turned

[6] *See Daniel R. Hickman, supra* note 3.

[7] 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).

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

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

and saw appellant on the floor next to his chair. Appellant reported the incident on the date it occurred, and also stopped work and sought medical treatment at a hospital emergency room on that date.[10]

The evidence also establishes that the April 19, 1994 employment incident caused a personal injury. Appellant's attending physician, Dr. G.J. McGowan, a Board-certified family practitioner, admitted appellant to the hospital and placed him in traction on April 19, 1994, the date of the claimed injury. Dr. McGowan stated that he hoped appellant had sustained only a soft tissue injury but that he needed to be worked up in the hospital. Appellant was in the hospital from April 19 to 21, 1994; in a discharge summary Dr. A.M. Guimaraes, a family practitioner, addressed appellant's past history of back problems, accurately set forth a history of the April 19, 1994 employment incident, noted the results of a magnetic resonance imaging scan on April 20, 1994 and of a physical examination of appellant, and diagnosed "Right sciatica secondary to injury -- while at work." Similarly, Dr. McGowan, in a May 4, 1994 report, diagnosed back pain with sciatica. In a report dated May 11, 1994, Dr. McGowan stated that appellant had reinjured his back, and diagnosed "soft tissue and/or sacroiliac joint injury exacerbating an old back problem." These reports are sufficient to establish that appellant sustained a personal injury on April 19, 1994.

The decisions of the Office of Workers' Compensation Programs dated August 7, 1996 and November 30, 1995 are reversed and the case is remanded to the Office for a determination of the extent of disability attributable to appellant's April 19, 1994 employment injury.

Dated, Washington, D.C.
December 10, 1998

David S. Gerson
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

[10] An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the 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. *Thelma Rogers*, 42 ECAB 866 (1991).