U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FREDERICK J. HINDMAN and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

Docket No. 96-1396; Submitted on the Record;
Issued March 20, 1998

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of his federal employment on May 22, 1995.

In the present case, appellant a letter carrier, filed a claim on June 24, 1995 alleging that he sustained a back injury on May 22, 1995, while picking up trays of mail from a parcel gurney. The Office of Workers' Compensation Programs denied appellant's claim by decision dated August 28, 1995, on the grounds that fact of injury was not established. The Office denied modification of the denial of the claim on September 21 and November 6, 1995.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including 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 of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[1] To determine whether a federal 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 employment incident at the time, place and in the manner alleged. 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.[2]

In the present case, the Board finds that appellant has established that a work incident occurred as alleged. The Board has previously stated that an incident does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an incident

[1] *Jerry A. Miller*, 46 ECAB 243 (1994).

[2] *Gene A. McCracken*, 46 ECAB 593 (1995).

in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or 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, if otherwise unexplained, may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case. 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.[3]

Appellant alleges that he informed his supervisor, Kim Quayle, of his May 22, 1995 injury, on that day as he "made a comment to Kim Quayle about my back, when I was outside loading.…" The employing establishment has disputed appellant's claim on the grounds that appellant did not provide notification of his alleged May 22 injury until June 23, 1995. Appellant's supervisor Kim Quayle has advised that appellant called in sick on Monday, June 12, 1995, as a result of a car accident he was involved in on Sunday, June 11, 1995. Appellant did request a CA-17 on or about June 13, 1995 when he returned to work. Supervisor Quayle explained that she did not know if appellant was filing a claim relative to the nonwork-related automobile accident. When appellant was asked why he needed a CA-17 he stated that his back was hurting, at which time appellant was advised that the CA-17 was a form used to document on-the-job injuries. Supervisor Quayle stated that at no time during the conversation did appellant indicate that he had sustained a job-related back injury. On June 23, 1995 appellant again told supervisor Quayle that he needed a CA-17. Upon questioning, appellant advised that he had sustained a back injury from lifting, but appellant indicated that he would have to consult his notes for further information. Appellant's supervisor stated that this was the first time appellant advised that he had sustained an on-the-job injury. Appellant was then given a Form CA-1 on June 24, 1995, which he completed that day. His supervisor also advised that appellant had been questioned as to whether he reported his May 22, 1995 injury at the time of occurrence. Appellant had responded that he had commented that his back was bothering him as he walked past his supervisor on the work room floor. His supervisor stated that such a casual remark did not constitute proper notification of a job-related injury.

Appellant also submitted a statement from his Union President dated July 21, 1995, which noted that appellant had been in her office on June 12, 1995 for steward training, that on that day appellant had related that he sustained a back strain on May 22, 1995 as he lifted some trays full of mail; that he had told his supervisor that same day that his back was bothering him; and that he had requested a CA-1 on about the June 8, 1995, but had not yet received such a form.

The medical evidence of record, indicates that appellant first sought treatment from his treating physician, Dr. Heidi McNulty on June 27, 1995 with a history of injury while lifting mail on May 22, 1995. Appellant was thereafter treated by Dr. McNulty's medical associate, Dr. John A. Whitham, an osteopathic, physician. Dr. Whitham opined in a report dated August 2, 1995 that appellant reported that he was squatting to pick up a tray of mail when he strained his back on May 22, 1995. He opined that the injury appellant described on the injury date May 22, 1995 was consistent with the injury for which he was being treated. Dr. Whitham

[3] *Nathaniel Cooper*, 46 ECAB 1053 (1995).

stated that appellant had a lumbar strain which was caused by lifting on the job and that appellant's tall body habitus would make him more prone to this kind of problem even when he lifted with good technique. Appellant has explained that he delayed seeking treatment as he believed hot baths and use of "icy hot" would relieve his back pain without further treatment.

While the employing establishment has disputed appellant's claim on the grounds that he did not properly notify them of his injury, until he filed the Form CA-1 on June 24, 1995, the employing establishment has not actually disputed that appellant sustained an incident on May 22, 1995, but rather that he did not initially provide proper notification of such. Likewise while the medical evidence indicates that appellant did not seek medical treatment until June 27, 1995, appellant did provide a consistent history of injury at that time. Appellant has explained that he initially believed his back pain would be relieved with hot baths and "icy hot" and that he therefore waited before filing a formal claim or seeking medical treatment. The Board finds that while there was approximately a one-month delay in filing of the claim form, appellant's allegations of injury are consistent with the history of injury provided by his physicians. Furthermore, there is no evidence of record that such incident or injury did not occur. The record is devoid of any inconsistent statements by either appellant or any other party. Appellant has therefore met his burden of proof to establish that the incident occurred in the time, place and manner alleged.

The record also contains an uncontroverted inference of causal relation as represented by the reports of Dr. Whitham. As the Office has not evaluated the medical evidence of record to determine whether appellant did sustain a medical condition causally related to his May 22, 1995 incident, the case shall be remanded to the Office for further development.

The decisions of the Office of Workers' Compensation Programs dated November 6 and September 21, 1995 are hereby set aside and this case is remanded to the Office for further proceedings consistent with this opinion.

Dated, Washington, D.C.
March 20, 1998

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member