

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KIMBERLY G. STEWART and U.S. POSTAL SERVICE,
POST OFFICE, Harrisburg, Pa.

*Docket No. 96-1399; Submitted on the Record;
Issued March 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish an employment-related foot or back condition in the performance of duty on July 6, 1997, as alleged.

The Board has duly reviewed the record and finds that appellant has not met her burden of proof to establish an employment-related foot or back condition in the performance of duty on July 6, 1997, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the 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.² These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury, to one single incident, or an occupational disease due to events occurring over a period of time.³ With respect to the factual component of a claim, 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.⁴ An employee has not met his burden of proof, when there are such inconsistencies in the evidence as to cast serious doubt

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ The Office of Workers' Compensation Programs' regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift. See 20 C.F.R. §§ 10.5(a)(15), (16).

⁴ *Thelma S. Buffington*, 34 ECAB 104 (1982); *Theodore W. Manginen*, 15 ECAB 57 (1963).

upon the validity of the claim.⁵ 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.⁶

With respect to the medical component, the claimant must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relationship.⁷ Rationalized medical evidence is evidence which relates a work incident or factors of employment to a claimant's condition, with stated reasons of a physician.⁸

On July 22, 1993 appellant, then a 47-year-old letter carrier, filed a claim for a "severe sprain w[ith] possible ligament and or tendon damage to the left foot." Appellant described that she injured her left foot "while casing mail" on July 7, 1993 and noted that as she "went up on [her] toes to reach a high slot [she] felt a 'pop' and stinging pain across top of left foot." A witness stated that he observed appellant stooped over and bent, walking with a limp of the left leg, and that another coworker, Patti Sparier, told her she had seen the incident. She noted appellant's statements that she "hurt herself trying to reach on top of carrier case."

Appellant stopped work for two weeks, and upon return she filed the claim for a traumatic injury. Based on the two-week delay of notice of injury, the employing establishment controverted appellant's claim. The employing establishment also noted that the report she submitted from her attending physician was a report, which pertained to treatment for another condition as a result of a prior work injury.⁹ The report appellant submitted, was a July 16, 1993 report from Dr. Frank W. Lopez, a Board-certified physiatrist, who had been treated her previously for sacroiliac joint disease with back pain and radicular symptoms in the left leg. Dr. Lopez noted a history of "pain in her left foot associated with the increase in work status with a higher volume of work over the holiday" and reported findings of tenderness in the

⁵ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

⁶ *See Dorothy Kelsey*, 32 ECAB 998 (1981).

⁷ *See Kathryn Haggerty*, 45 ECAB 383 (1994); *Lucrecia M. Nielson*, 42 ECAB 583 (1991).

⁸ *Gary L. Fowler*, 45 ECAB 365 (1994); *Debra A. Kirk-Littleton*, 41 ECAB 703 (1990); *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (finding that a medical opinion not fortified by medical rationale is of little probative value).

⁹ On December 18, 1986 appellant filed a claim for a hip condition resulting from a fall down wet steps. Under claim number A3-119644, appellant's claim was accepted for contusion and strain of the left hip. Following a recurrence of total disability beginning on September 30, 1987, the Office amended the acceptance of appellant's claim to include a iliopsoas syndrome and appellant was paid wage-loss compensation until she returned to work on May 20, 1989. Appellant was off work again for five months between October 1990 to March 1991, when she returned to work part time. Based on a refusal to undergo evaluation with Dr. Bruce Goodman, the Office suspended appellant's compensation benefits by decision dated March 2, 1993. Appellant appealed the decision, to terminate her compensation benefits, in addition to a decision denying her request for a recoupment hearing on an overpayment. By decision and order dated August 17, 1995, the Board remanded the case, to the Office for evaluation of her reasons for refusing the examination by Dr. Goodman.

dorsum of the left foot over the third and fourth metatarsal without discoloration. He recommended x-rays of the left foot to rule out a fracture. Appellant submitted results of x-rays taken on July 17, 1993 which were negative. In his report, the radiologist diagnosed soft tissue swelling in the forefoot area with no definite underlying osseous abnormality. The record indicates that appellant was also treated by Dr. Jay Cho, a Board-certified physiatrist, an associate of Dr. Lopez prior to Dr. Lopez around that time. Dr. Cho noted in a form report, that he evaluated appellant on July 7, 1993, for a stress factor of the left foot. He indicated by check mark that the condition was not caused or aggravated by an employment activity.¹⁰

In response to an August 28, 1993 letter, from the Office, appellant submitted two additional statements in which she repeated the manner in which she felt a “pop” across the top of her left foot with immediate pain, while lifting her foot on her toes to reach a high shelf at work. Appellant also noted, “when I fractured my foot the abrupt motion I made getting off that foot aggravated my back.” She stated that she used ice packs and soaked her foot to relieve the swelling discoloration and pain and that it continually got worse. Appellant stated that when she called Dr. Lopez on July 8, 1993, he recommended rest and that “we thought it was a sprain, but it got worse.”

By decision dated November 29, 1993, the Office denied appellant’s claim on the grounds that the medical evidence, did not establish a foot condition due to factors of her federal employment. In a letter requesting an oral hearing, appellant contended that the medical report from Dr. Lopez established both a foot injury and an aggravation to her underlying back condition. She noted that when she went to the emergency room and x-rays were taken on July 17, 1993, she was advised that she had sprained her foot and was provided with crutches, which she could not use because of her back condition. Appellant stated that when she telephoned Dr. Lopez on July 19, 1993, she informed him “of the incident and also related that the swelling had [gone] away,” although her back was still tender. She was provided work restrictions and released to light duty at that time. Appellant stated that when she returned to work, her foot continued to swell some but her back was becoming progressively worse, so that she stopped work on August 4, 1993. She submitted medical treatment notes dated between August 16 and October 18, 1993, from Dr. Cho, in which he noted that a computerized tomography (CT) scan revealed spondylosis at L5-S1. He noted that a comparison of diagnostic studies four years prior to that date showed the osteoarthritis in the upper apophyseal joints had progressed.

A hearing was held on July 26, 1995. Two weeks prior to the hearing, appellant submitted a report from Dr. Roberta E. Griff, a physiatrist, associated with Dr. Cho, who noted that she evaluated appellant on April 19, 1995. Dr. Griff noted that appellant provided a history of the foot injury, occurring on July 7, 1993 and that as she leaned on her left foot, her ankle gave way causing her to fall. Dr. Griff stated that in trying to prevent the fall, appellant turned and twisted her back, reinjuring her back. She noted that while appellant returned to light-duty

¹⁰ The record contains his treatment note from that date, which states “[t]his patient who suffers with pain in the back, left hip and left groin returns. Unfortunately on July 6, 1993, patient developed a stress fracture in the left foot.... Patient still complains of pain in the left hip.”

work, she sustained total disability from work beginning in August 1993 due to her ankle injury and aggravation of her back condition.

At the hearing, appellant testified that as she felt a pop across her foot, her foot started to buckle and she fell backwards into the case behind her, striking the middle of her back. Appellant testified that a coworker assisted her and while she informed her supervisor of her injury, she opted against medical treatment because she did not think she was hurt. She testified that at the end of the day, she used medication provided to her for her back injury, which she noted occurred in 1986. She testified that when she obtained treatment on July 7, 1993, she was provided with a bandage which was stronger than an ace bandage. Appellant testified that after one week of working a light-duty job, her foot started to swell, so that she was unable to put her shoe on and that she started physical therapy in August 1993 for both her foot and back condition. She testified that the radicular symptoms of pain through the lower left side extending across the right side and down her left leg, was the same type of pain she had after her 1986 employment injury. At the hearing, appellant responded to questions from the hearing representative by stating that she thought she had reported a back condition at the same time she reported her foot injury and that her foot injury resolved within 10 days.

After the hearing, the employing establishment submitted records pertaining her preemployment physical examination she underwent on November 28, 1986, at which time she did not report physical injuries she had sustained previously, which became the grounds of subsequent removal action.¹¹ By decision dated September 28, 1995, an Office hearing representative found appellant's history of injury, as lacking in credibility and affirmed the prior November 29, 1993 decision.

The Board notes that appellant's claims contains too many inconsistencies and is not supported by credible factual evidence. As stated above, in order for an employee to provide sufficient factual information to support a claimed injury, the employee's statements must be consistent with the surrounding facts and circumstances and her 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. Appellant stated that a coworker assisted her in injury, but she did not provide the statement from that witness. Instead, she provided a statement from another witness who observed her limping and bent. Appellant testified at the hearing that she felt this statement was sufficient to establish that she injured her back. However, the first time she mentioned a claimed back injury or aggravation of her prior back condition was in September 1993, two months after the alleged injury. While she submitted medical records, including reports from her physicians who had been treating her for a hip condition and back pain, the reports do not provide a history of the injury as alleged by appellant. In his initial treatment note, Dr. Cho, a physiatrist, noted that his office had been providing care for appellant's hip and back condition and that appellant sustained a stress

¹¹ Appellant began her federal employment in 1985, but did not begin employment as a letter carrier until 1986, at which time she underwent a preemployment physical. Following an investigation into prior injuries sustained by appellant, and her failure to report such injuries, appellant was removed by the employing establishment on August 30, 1994. By decision dated April 11, 1995, an arbitrator upheld the employing establishment's removal for her failure to report multiple past injuries.

fracture on July 7, 1993. In his subsequent form report, he negated a relationship between the July 7, 1993 incident and work factors with a check mark. In a narrative report, Dr. Lopez, a Board-certified physiatrist, attributed appellant's pain in her foot to an increase in processing mail, apparently over the July 4th holiday weekend. This history of injury is different than appellant's history of injury. While he reported findings of tenderness in the dorsum of the left foot over the third and fourth metatarsal without discoloration, he reported that x-rays were negative and he did not indicate any diagnosed condition attributable to either appellant's history of injury or to his own.

The report by Dr. Griff, a physiatrist associated with Dr. Cho's practice, is of little probative value in that it is two years after the alleged injury and it provides another version of a back injury, namely a twisting incident as opposed to the striking incident to which appellant testified at the hearing.¹² While appellant has submitted a further report by Dr. Griff on appeal, the Board is unable to review her report, since it was not submitted before the Office prior to its September 28, 1995 decision.¹³

Accordingly, the Board finds that the record contains contradictory evidence and insufficient supporting evidence to establish either a foot injury in the performance of duty or an aggravation to her underlying back condition, as alleged.

The decision of the Office of Workers' Compensation Programs dated September 28, 1995 is hereby affirmed.

Dated, Washington, D.C.
March 9, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

¹² The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; see *Katherine A. Williamson*, 33 ECAB 1696; *Arthur N. Meyers*, 23 ECAB 111 (1971).

¹³ The Board has jurisdiction to review only the evidence in the case record that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).