

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL N. CARUSO and U.S. POSTAL SERVICE,
POST OFFICE, Boxford, Mass.

*Docket No. 96-2584; Submitted on the Record;
Issued November 12, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant injured his back and neck in the performance of duty.

Appellant, then a 36-year-old rural carrier, filed a notice of traumatic injury on December 7, 1993, claiming that on March 27, 1993 he slipped and fell while reaching through the passenger side of his car's window to put mail into a box on his route and hurt his back and neck. Appellant sought treatment on April 1, 1993 but continued to deliver mail part time on Saturdays until June when increasing back pain forced him to quit.

On December 15, 1993 the Office of Workers' Compensation Programs requested that appellant provide additional factual information and a narrative medical report from his treating physician. In response, appellant explained the delay in filing his claim. He stated that he did not want to jeopardize becoming a full-time federal employee and had expected to recover from the back strain, but found that he could not tolerate the long hours of sitting required in his other job as a private investigator due to his back pain.

On January 26, 1994 the Office denied the claim on the grounds that the medical evidence was insufficient to establish that appellant sustained an injury from the March 27, 1993 incident. The Office noted that appellant's CA-1 form indicated that the first medical treatment for the alleged injury occurred on June 10, 1993, when Dr. Albert V. Franchi, Board-certified in pediatrics, diagnosed a lumbar strain. A January 13, 1994 note stating that appellant developed acute and recurrent low back pain while putting mail into boxes was unsigned and failed to indicate how appellant's job caused back problems in light of the fact that appellant's other, full-time job required driving and sitting for extended periods of time.

Appellant timely requested an oral hearing, which was held on September 12, 1994. Appellant testified about his duties delivering the mail and working as an investigator. He explained how he hurt his back on March 27, 1993 and how the pain progressed over the next two months until he could not work any more. Appellant explained that he was then terminated

by the employing establishment because he had been unable to work when needed. Appellant added that he was told by a union representative to file a claim so that his job would remain open.¹

On October 19, 1994 the hearing representative denied the claim on the grounds that the medical evidence was insufficient to establish that appellant sustained a back condition causally related to the March 27, 1993 incident. The hearing representative found that the incident occurred as appellant alleged but that no physician's report in the record contained a complete factual and medical background, including the March 27, 1993 incident plus the prior gardening/running injury in 1991 plus the duties and physical requirements of appellant's full-time and part-time jobs.

Appellant timely requested reconsideration and submitted a February 14, 1995 report from Dr. Alexander B. Latty, Board-certified in internal medicine. On May 30, 1996 the Office denied appellant's request on the grounds that the evidence submitted in support of reconsideration was insufficient to warrant modification of its prior decision.

The Board finds that this case is not in posture for decision and requires further development of the medical evidence.²

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 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.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁵

In a claim for compensation based on a traumatic injury, the employee must establish fact of injury by submitting proof that he or she actually experienced the employment accident or event in the performance of duty and that such accident or event caused an injury as defined in the Act and its regulations.⁶ The Office's regulations define traumatic injury as a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as

¹ The record indicates that the notice of removal dated November 18, 1993 would be held in abeyance pending the Office's decision on appellant's claim.

² See *John J. Carlone*, 41 ECAB 354, 358 (1989) (finding that medical evidence submitted by appellant is sufficient, absent any opposing medical evidence, to require further development of the record).

³ 5 U.S.C. §§ 8101-8193 (1974).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Id.*

⁶ *Gene A. McCracken*, 46 ECAB 593, 596 (1995).

to time and place of occurrence and member or function of the body affected.⁷ The injury must be caused by a specific event or incident or series of events of incidents within a single workday or shift.⁸

In this case, the Office found that the March 27, 1993 incident described by appellant occurred, *i.e.*, appellant experienced back and neck pain while trying to reach through the window of his vehicle to put mail into boxes on his rural route. Further, the medical evidence is generally supportive of appellant's allegations.

In a June 6, 1994 report, Dr. Latty described the March 27, 1993 incident as related by appellant, noted his treatment of appellant on April 1, 1993, and diagnosed acute cervical and lumbar strain "caused by the strenuous and unorthodox physical contortions demanded by his work as a postman." Dr. Latty stated that over the months appellant's lumbosacral pain persisted, aggravated by physical exertion and sitting for more than 30 minutes. He added that a magnetic resonance imaging (MRI) scan showed degenerative disc disease at L1-2, L2-3 and L4-5 with no significant neural compromise. Dr. Latty concluded that appellant sustained:

"An acute and now chronic low back pain as a result of injury from his physical duties as a postman. Perhaps underlying lumbosacral disc disease has perpetuated the problem, but the work injury definitely caused the problem."

In response to the hearing representative's decision, appellant submitted a February 14, 1995 report from Dr. Latty who indicated that a prior 1991 back injury had cleared before the 1993 incident, that appellant's work as an investigator did not cause any disability because he had been able to do this work for many years before 1993, and that the MRI findings "were perhaps relevant in perpetuating [appellant's] disability somewhat," but those findings were not the cause of it-- "his work for the postal office was the cause." Dr. Latty concluded:

"After total review of [appellant's] history, I am thoroughly convinced that [his] continuous activity of reaching across the car with very heavy packages and inserting them in mail boxes on a repetitive daily basis was the sole cause of this disability."

The Board notes that no medical evidence contradicts Dr. Latty's opinion -- the Office did not refer appellant for a second opinion evaluation or seek the medical review of the Office medical adviser. Therefore, the Board finds that Dr. Latty's conclusions constitute an uncontroverted inference of causal relationship.⁹

On remand, the Office shall prepare a statement of accepted facts which shall include a description of the March 27, 1993 incident and his employment duties, the dates and types of

⁷ 20 C.F.R. § 10.5(15).

⁸ *Richard D. Wray*, 45 ECAB 758, 762 (1994).

⁹ *See Udella Billups*, 41 ECAB 260, 269 (1989) (finding that a physician's unrefuted testimony in a state claim was sufficiently probative to require the Office to develop the record further).

treatment afforded appellant for his back condition, and pertinent information from the 1991 claim record. The Office shall then submit the statement of accepted facts, together with appellant's medical records, to an appropriate Board-certified specialist for an examination and a reasoned medical opinion on whether appellant's employment duties aggravated his underlying condition and whether such aggravation was temporary or permanent. Following such further development as it deems necessary, the Office shall issue a *de novo* decision.

The May 15, 1996 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision.

Dated, Washington, D.C.
November 12, 1998

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member