U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SUSAN SMITH and U.S. POSTAL SERVICE,
POST OFFICE, Pasadena, Calif.

Docket No. 96-2543; Submitted on the Record;
Issued April 14, 1999

DECISION and ORDER

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

The issue is whether appellant has established that she sustained an ankle injury while in the performance of duty on January 22, 1996.

On February 12, 1996 appellant, a 34-year-old letter carrier, filed a claim alleging that on January 22, 1996 she stepped on a tree while making a delivery, injuring her left ankle. Appellant's supervisor, however, indicated on the claim form that the employing establishment was controverting the claim because appellant had submitted conflicting evidence regarding the alleged incident. The supervisor noted that appellant had submitted a written statement to him on January 22, 1996, which indicated that her injury was not work related. The supervisor further stated that appellant did not report the injury on the date it allegedly occurred.

In a handwritten report dated January 31, 1996, Dr. Jay M. Shuken, a podiatrist, stated that eight days prior, appellant suffered a misstep and sprained her ankle when she stepped on an amber tree. Dr. Shuken noted that appellant continued to work and her foot pain became worse to the point where she was no longer able to work. Dr. Shuken stated that appellant's injury was work related.

Appellant submitted a handwritten statement dated February 12, 1996, in which she noted that, although she was injured on January 22, 1996, she waited until January 29, 1996 to consult a physician because she had continued to walk on the foot until the pain became too severe. Appellant alleged that on January 29, 1996 she called in sick and reported the injury to her supervisor, who called her back and offered to have someone from the employing establishment go out to her house and drive her to the medical clinic. Appellant responded that she preferred to consult her own physician, to which the supervisor initially agreed, but allegedly told her subsequently that if she wished to consult her own doctor she would have to write a statement saying that she did not know how the injury happened and that the ankle sprain was not work related. Appellant alleged that the supervisor came to her home and made her sign a statement that her injury was not work related and demanded that she be treated at the medical

clinic. Appellant stated that her supervisors later told her that if she attempted to file a workmen's compensation claim she would be fired, and that they would conduct an investigation against her and her doctor.

Dr. Shuken subsequently examined appellant on February 6, 1996 and submitted a progress note dated February 6, 1996, in which he stated that he had released appellant to return to work on February 12, 1996.

By decision dated March 28, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that it had received inconsistent evidence regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office stated that the inconsistencies in the evidence cast serious doubt on the validity of the claim, and that appellant's statements and actions were inconsistent with the alleged injury.

In a letter dated May 16, 1996, appellant requested reconsideration of her claim.[1] Accompanying appellant's request was a May 8, 1996 report from Dr. Shuken, who related appellant's history of the alleged injury and discussed his previous findings regarding appellant's ankle sprain. Dr. Shuken further stated:

> "It was my feeling that there is no question that this injury was work related and the signing of a statement stating it was not was strictly through intimidation by the [employing establishment] supervisor who probably did not understand how [appellant] injured herself. There is no question in my mind that from reading both [appellant's] statement, and my history of the injury, that this was related to the injury sustained on January 21 [sic], 1996 and that [appellant] definitely had an ankle sprain that occurred during the time she was in active employment as a postal carrier."

Dr. Shuken further stated that there was no question in his mind that appellant's condition was directly related to the injury because the injury was consistent with an eversion [sic] sprain which occurred when she stepped by accident on the large tree seed. Dr. Shuken diagnosed an ankle sprain of the collateral ligaments of the left foot, which he felt responded very well to treatment and rest.

By decision dated June 12, 1996, the Office denied appellant's request for reconsideration on the grounds that the evidence appellant submitted was irrelevant and immaterial to the issues upon which the previous denial was based and was, therefore, not sufficient to warrant review of the prior decision.

The Board finds that the case is not in posture for decision.

[1] Appellant stated in this letter that she would also submit witness statements from two other persons, apparently co-workers, but these statements are not in the case record.

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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 timely filed within the applicable time limitation period of the Act, that an injury was 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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.[5] 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.[6]

In the instant case, appellant alleged that she was intimidated and harassed into writing the January 29, 1996 statement indicating that her ankle injury was not work related and that she was unsure as to how it occurred. Appellant also alleged that the supervisor came to her home, insisted that she sign the statement and demanded that she be treated at the employing establishment's medical clinic. Appellant stated that her supervisors later told her that if she attempted to file a workmen's compensation claim she would be fired, and that an investigation would be conducted of her and her doctor. Dr. Shuken, appellant's treating podiatrist, corroborated appellant's allegation in his May 8, 1996 report, indicating that there was no question that appellant's injury was due to a work-related incident and that her signing of the January 29, 1996 statement indicating that it was not work related was entirely due to intimidation by her supervisor.

The record also contains a note from one of appellant's supervisors, dated January 29, 1996, which states that he "went to her house at 11:30AM to pick up a statement from her saying she was not injured on the job." The record contains the allegation from appellant and her treating podiatrist that she was intimidated and harassed into writing this statement, which is unrefuted and a statement from her supervisor establishing that he did, in fact, appear at appellant's house on the date in question for the purpose of acquiring a statement from her asserting she was not injured on the job. The record, however, contains no statement from appellant's supervisor or the employing establishment which either addresses or denies appellant's allegations. Based on these facts, the Office should request a statement from appellant's supervisor pertaining to the allegation raised by appellant and Dr. Shuken. The

[2] 5 U.S.C. §§ 8101-8193.

[3] *Joe Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

[6] *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

Board will set aside the Office's March 28, 1996 decision and remand the case for further development.

The decision of the Office of Workers' Compensation Programs dated March 28, 1996 is hereby set aside and remanded for further development in accordance with the above opinion.

Dated, Washington, D.C.
April 14, 1999

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member