U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LEONARD T. MUNSON and U.S. POSTAL SERVICE, PHILADELPHIA PROCESSING & DISTRIBUTION CENTER, Philadelphia, PA

Docket No. 98-1478; Submitted on the Record;
Issued December 23, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant sustained an injury in the performance of duty on April 4, 1997; (2) whether appellant sustained an emotional condition on April 4, 1997 in the performance of duty; and (3) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing under 5 U.S.C. § 8124 as untimely.

On April 5, 1997 appellant, then a 48-year-old clerk, filed a claim alleging that he sustained a traumatic injury on April 4, 1997. Appellant described the injury as follows:

> "I came around the back of the letter sorting machine three and a clerk was in my operation who was not supposed to be there. I ask[ed] her to leave and the person [to] whom she was speaking plac[ed] his hands on my left arm upper part. As I awoke up the next day my left arm was sore going up to my shoulder."

On the reverse side of the claim form, appellant's supervisor, Barry McDuffie, indicated that, "Mr. Dienna put his hands on appellant trying to move him away. This is willful misconduct." Mr. McDuffie further added, "the employee put his hands on appellant to stop him from arguing with Ms. [Anndrella] Oatts. I do [not] feel he assaulted appellant. Appellant reported the injury the day after. He said he talked to his lawyer."

In a report dated April 5, 1997, a nurse with the employing establishment's clinic related that appellant complained of pain in his left upper arm after a "physical assault yesterday at work." The nurse related that appellant was "extremely stressed from [the] incident."

In an emergency room report dated April 5, 1997, Dr. Manisha Dhuria, a Board-certified internist, diagnosed a left arm sprain and indicated that appellant related the history of injury as an assault at work when "another employee twisted his left upper arm and now he has pain." Dr. Dhuria found mild tenderness of the left shoulder on examination but no swelling or loss of motion. In form reports of the same date, Dr. Dhuria checked that the condition diagnosed was

caused or aggravated by employment and found that appellant could resume his regular employment.

In a statement dated April 7, 1997, appellant related that on April 4, 1997 he returned to his letter sorting machine and found Mr. Dienna and Ms. Oatts at the machine talking with one another. Appellant asked Ms. Oatts to leave and Mr. Dienna intervened. Appellant related:

> "Mr. Dienna [then] started to come towards me and I repl[ied] to him please do not place your hands on me. He then place[d] his hands on my upper left arm and twisted it very hard that I lost my balance. I then turned around and ask[ed] Mr. McDuffie what was he going to do about this physical assault against me. He made a statement for me to go and get Mr. Gilmore who was in the back office in a meeting which I did so."

In an employing establishment clinic note dated April 8, 1997, a nurse noted that appellant complained of swelling and pain in his left hand, shoulder and chest. The nurse indicated that appellant "states he fears for his safety and is having pain -- presents with an obviously swollen [left] hand in particular the [left] thenal aspect…"

In statements dated April 8, 1997, Mr. Gilmore and Mr. McDuffie described the meeting held on April 4, 1997 regarding the incident between appellant and Mr. Dienna. Mr. Gilmore described the meeting as follows:

> "Appellant said he then approached [Mr.] Dienna and [Mr.] Dienna reached out to touch him and [appellant] said he instructed Mr. Dienna not to put his hand on him. [Appellant] said that [Mr.] Dienna disregarded his instructions and touch[ed] him anyway. Mr. McDuffie said that he witnessed the incident and did see Mr. Dienna casually touch [appellant].

Mr. Gilmore further related that Mr. Dienna stated that he "placed his hand on [appellant] to keep him at a distance," and indicated that they did not discuss whether appellant was injured due to Mr. Dienna putting his hand on appellant.

In a statement dated April 8, 1997, Mr. McDuffie reported that he did not see Mr. Dienna touch appellant.

In a statement dated April 8, 1997, appellant related that Mr. Dienna put his hands on his upper left arm and "twisted it very hard."

In an interview with inspectors with the employing establishment, Mr. Dienna stated that he did not touch appellant.

In a statement dated April 8, 1997, Ms. Oatts indicated that she had left the area after appellant yelled at her and did not see any incident between appellant and Mr. Dienna.

In a report by the employing establishment's investigators dated April 14, 1997, an investigator described the statements of witnesses and noted several inconsistencies among the

statements by those involved. The investigator noted that appellant did not mention that his arm was twisted at the April 4, 1997 meeting; that Mr. Dienna denied touching appellant in a statement to the investigators but admitted touching appellant at the April 4, 1997 meeting; and that Mr. McDuffie indicated that he did not observe the altercation but that Mr. Gilmore stated that Mr. McDuffie told him that he had witnessed Mr. Dienna touch appellant.

In a statement dated May 8, 1997, Mr. Dienna related that appellant yelled at Ms. Oatts to "return to her assignment" and stated:

> "As [appellant] was approaching me still yelling for Ms. Oatts to return to her assignment, I stretched out my left hand, which was still holding unverified mail, to redirect [appellant] away from my physical presence as he was approaching rapidly. As he was approaching me he ran into my left hand, [which was] still holding unverified mail. He brushed by my hand, he then yelled at me not to put a hand on him which I did [not]."

By decision dated June 18, 1997, the Office denied the claim on the grounds that the evidence did not establish fact of injury. The Office found that, while appellant may have been touched on the arm, the evidence did not establish that he was assaulted or his arm twisted and thus determined that he had not established that the incident on April 4, 1997 occurred at the time, place and in the manner alleged.

In a report dated July 8, 1997, Dr. David Monheit, a Board-certified psychiatrist, stated that appellant related a history of an assault by a coworker on April 9, 1997, which injured his neck and left arm. He diagnosed an adjustment disorder with anxiety and noted that appellant was absent from work due to his emotional condition for two weeks.

By letter dated October 18, 1997, appellant requested reconsideration but directed his request to the Office's Branch of Hearings and Review.

In a decision dated January 28, 1998, the Office denied appellant's request for a hearing as untimely.

The record indicates that appellant received treatment from an orthopedist on July 31, 1997 and January 29, 1998.

By letter dated March 2, 1998, appellant requested reconsideration of his claim. By decision dated March 25, 1998, the Office denied modification of its prior decision. In its decision, the Office accepted that on April 4, 1997 appellant "came in contact with Mr. Dienna's outstretched hand" but did not accept that Mr. Dienna twisted or grabbed his arm. The Office further found that, as the submitted medical reports relied on an incorrect history of injury, they were insufficient to establish an injury.

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

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been

established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.[1] An injury does not have to be confirmed by eyewitnesses in order to establish that an 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 or her subsequent course of action.[2] An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[3] 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 may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.[4] However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.[5]

The Board finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the employment incident. Appellant reported that Mr. Dienna touched him without consent immediately after the incident and the next day submitted a detailed statement indicating that Mr. Dienna grabbed and twisted his arm. Appellant further sought medical treatment on the day after the alleged incident and the medical reports of record contain a history of injury consistent with appellant's account of events. Mr. Dienna's May 1997 statement that appellant ran into his outstretched hand is not credible given his denial to the employing establishment's investigator of any physical contact between himself and appellant. Further, the statement of a supervisor present at the incident, Mr. McDuffie, is inconsistent as it is unclear from his statements and those of his coworkers whether he actually witnessed the event.

Thus, under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence. The Board, therefore, finds that the evidence of record is sufficient to establish an incident occurred at the time, place and in the manner alleged by appellant on April 4, 1997.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish a causal relationship between the diagnosed condition and any disability therefrom and the employment incident, appellant must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such causal relationship.[6] In an emergency room report dated

[1] *See Elaine Pendelton*, 40 ECAB 1142 (1989).

[2] *Charles B. Ward*, 38 ECAB 667 (1989).

[3] *Tia L. Love*, 40 ECAB 586 (1989).

[4] *Merton J. Sills*, 39 ECAB 572 (1988).

[5] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[6] *James Mack*, 43 ECAB 321 (1991).

April 5, 1997, Dr. Dhuria, a Board-certified internist, diagnosed a left arm sprain and discussed appellant's history of an assault at work. Dr. Dhuria, however, did not specifically address the cause of the diagnosed condition of left arm sprain and thus his report is insufficient to meet appellant's burden of proof. In form reports dated April 5, 1997, Dr. Dhuria, a Board-certified internist, indicated the history of injury as occurring when a coworker twisted appellant's arm, diagnosed a left arm sprain and checked "yes" that the condition was caused or aggravated by employment. However, the Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a form question regarding whether appellant's condition is related to the history of injury given is of little probative value. Without any explanation or rationale for the conclusion reached, such a report is insufficient to establish causal relationship.[7] Thus, appellant has not provided the medical evidence necessary to establish that the April 4, 1997 employment incident caused an injury to his left arm.

With respect to the issue of whether appellant sustained an emotional condition causally related to the April 4, 1997 employment incident, the Board finds that the case is not in posture for a decision.

Appellant submitted evidence that he may have sustained an adjustment disorder due to his encounter with Mr. Dienna on April 4, 1997. Physical contact arising in the course of employment, when substantiated by the evidence of record, constitutes a compensable factor of employment.[8] In a report dated July 8, 1997, Dr. Monheit, a Board-certified psychiatrist, stated that appellant related a history of an assault by a coworker on April 9, 1997, which injured his neck and left arm. He diagnosed an adjustment disorder with anxiety and opined that appellant should not work for two weeks due to his emotional condition.

Proceedings under the Federal Employees' Compensation Act[9] are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence.[10]

Although Dr. Monheit's opinion does not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that his emotional condition is causally related to his April 4, 1997 employment injury, it raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.[11] The case, therefore, will be remanded to the Office for further development of the medical evidence. On remand, the Office should prepare a statement of accepted facts which includes a description of the April 4, 1997 employment incident and refer

[7] *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

[8] *See Alton L. White*, 42 ECAB 666 (1991).

[9] 5 U.S.C. §§ 8101-8193.

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

[11] *Id.*

appellant to an appropriate medical specialist. After such further development as is necessary, the Office should issue a *de novo* decision on appellant's claim.[12]

The decisions of the Office of Workers' Compensation Programs dated March 25 and January 28, 1998 and June 18, 1997 are affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion of the Board.

Dated, Washington, D.C.
December 23, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[12] In view of the Board's disposition of the merits, the issue of whether the Office properly denied appellant's request for a hearing under 5 U.S.C. § 8124 as untimely is moot.