U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ERNEST M. RICCIARDELLI and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

Docket No. 98-2169; Submitted on the Record;
Issued December 22, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an injury on March 7, 1998.

In the present case, on March 10, 1998 appellant, then a 52-year-old mail carrier, filed a notice of traumatic injury claiming that he had sustained a back injury on March 7, 1998 while lifting trays of mail out of the back of his mail truck. The Office of Workers' Compensation Programs denied appellant's claim by decision dated May 2, 1998 on the grounds that appellant had not established fact of injury.

In a traumatic injury case, in order to determine whether an employee actually sustained an injury in the performance of duty, it must first be determined whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he 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.[1]

In the present case, the employing establishment controverted appellant's claim noting that appellant had only advised his supervisor on March 10, 1998 that he had hurt his back while moving trays in his truck on Saturday, March 7, 1998. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. 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. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon

[1] *Robert J. Krstyen*, 44 ECAB 227 (1992).

the validity of the claim.[2] 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.[3] However, an employee's statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.[4]

Appellant sought chiropractic treatment on March 10, 1998 at which time he related that he felt a sharp pain in his low back a short time after lifting a tray out of his mail truck on March 7, 1998 but that after a short time it "eased up" and he felt better. Appellant related that he thought that if he relaxed on Saturday and Sunday the pain would go away. However, by Monday night the pain became progressively worse, until it was unbearable and he sought chiropractic care on Tuesday, March 10, 1998. The Board finds that appellant has consistently alleged that he injured his back on Saturday, March 7, 1998 while lifting trays of mail from his truck. Appellant has adequately explained why he waited until Tuesday, March 10, 1998 to report the injury to his supervisor and seek chiropractic treatment. As there are no inconsistencies in the evidence such as to cast doubt upon the validity of the claim, the Board finds that appellant has established that an incident occurred on Saturday, March 7, 1998 while he lifted trays of mail from his truck.

The Board also finds that appellant has not established that he sustained a back injury on March 7, 1998. It is appellant's burden to establish with medical evidence that the employment incident caused a personal injury. In the present case, appellant submitted a narrative report and attending physician reports from a chiropractor, Dr. E.A. Alfano.

Under section 8101(2) of the Federal Employees' Compensation Act, chiropractors are considered physicians, and their reports considered medical evidence, to the extent that they treat spinal subluxations as demonstrated by x-ray to exist. While Dr. Alfano indicated that he was treating appellant for lumbar and sacroiliac subluxations, as well as sprains and strains, he also noted that his diagnosis was not based upon x-ray evidence because appellant refused to undergo x-ray examination. Therefore, as Dr. Alfano's diagnosis of subluxation was not based upon x-ray evidence, he is not considered a "physician" pursuant to the Act and his report is not construed as medical evidence.

Appellant failed to submit any probative medical evidence that he sustained a back injury on March 7, 1998. The Office properly denied appellant's claim because he did not meet his burden of proof.

[2] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

[3] *Dorothy Kelsey*, 32 ECAB 998 (1981).

[4] *Ruth M. Jackson*, 30 ECAB 917 (1979); *Bennie W. Butler*, 13 ECAB 156 (1961) and cases cited therein.

The decision of the Office of Workers' Compensation Programs dated May 2, 1998 is hereby affirmed.

Dated, Washington, D.C.
December 22, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Bradley T. Knott
Alternate Member