

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLIE G. PRESTON and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Dallas, Tex.

*Docket No. 97-1702; Submitted on the Record;
Issued March 15, 1999*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on October 3, 1996, as alleged.

On October 17, 1996 appellant, then a 65-year-old casual mailhandler, filed a notice of traumatic injury (Form CA-1) alleging that on October 3, 1996, he injured his back, left leg and hip while moving boxes and letter trays. On the reverse side of the form, the employing establishment indicated that the date of appellant's injury was September 26 or October 3, 1996, and that appellant had stopped work on October 5, 1996. The employing establishment controverted appellant's claim stating that appellant's "story is extremely inconsistent."

Accompanying the claim form appellant stated that he initially injured his back on October 3, 1996 while loading mail on the first floor of a warehouse, and that the next day his condition had improved. He then stated that he came back to work but that later that evening while at work the pain shifted from his back to his left hip and leg. Appellant noted that he had severe pain on Sunday in his back, hip and leg and numbness down his left foot and toes, and that he went to the hospital on Tuesday.

In a medical report dated October 10, 1996, Dr. Juan C. Yabraian, appellant's treating physician and an orthopedic surgeon, noted that the date of injury was September 26, 1996. However, in a separate report dated the same day but received by the Office on October 23, 1996, Dr. Yabraian stated that the date of injury was October 3, 1996.

In a letter received by the Office on October 23, 1996, the employing establishment controverted appellant's claim stating that appellant's verbal statement given during an accident review board meeting contradicted his written statement; that appellant did not report that an injury occurred at work until October 13, 1996; and that he did not appear to know when, where or how the injury occurred.

By letter dated October 28, 1996, the Office requested additional medical information from appellant, specifically, a description of the injury and the date of his initial medical treatment.

On October 30, 1996 appellant responded to the Office's request for further information noting that he had injured himself lifting boxes, that he returned to work the following day, and that, on Saturday, October 5, 1996, just before getting off work, the pain "increasingly got worse." Appellant then stated that he took medication and went to bed hoping that rest would permit him to return to work on Tuesday, October 8, 1996.

In a decision dated November 15, 1996, the Office denied appellant's claim for failure to establish fact of injury. The Office found that appellant filed a timely claim for compensation. However, the Office found that there were inconsistencies in the case regarding when the claimed incident occurred and in the manner alleged.

On November 18, 1996 appellant requested reconsideration. In support of his request appellant submitted a letter dated November 18, 1996 from Dr. Yabraian indicating that at no time did appellant state that his date of injury was September 26, 1996. Appellant also submitted hospital records which indicated that he had been treated on October 8, 1996 for low back pain.

On January 28, 1997 the Office, in a decision, denied appellant's request for reconsideration.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on October 3, 1996, 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 individual is an "employee of the United States" within the meaning of the Act, that the claim was filed within the applicable time limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty,⁴ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁵ 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.⁶

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989); *see also Daniel R. Hickman*, 34 ECAB 1220 (1983).

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

⁶ *Daniel J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

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.⁷ In this case, the Office found that there were such inconsistencies in the evidence as to cast doubt that the incident occurred as alleged. However, appellant has consistently maintained that on October 3, 1996 he injured his back and left side and leg while performing his duties as a casual mailhandler. There is no dispute that on October 3, 1996 appellant was performing his duties. Although the employing establishment noted that appellant had contradicted himself in a verbal report before the accident review board, the record does not contain any statement from appellant in which he states that the incident occurred at any time other than October 3, 1996.⁸ Further, Dr. Yabraian also stated that appellant's date of injury was October 3, 1996 and that appellant never specifically stated that the date of injury was September 26, 1996. An employee's statement alleging that an injury occurred at a given time, place and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹ In this case, appellant's statements were consistent and unrefuted. As there is no evidence in the case record to indicate that the incident of October 3, 1996 did not occur at the time and place and in the manner alleged by appellant in his claim filed on October 17, 1996, the Board finds that the weight of evidence supports appellant's statements that on October 3, 1996 he injured his back and left hip and leg while moving mail. Consequently, the Board finds that appellant has established that the incident occurred on October 3, 1996, as alleged.

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.

In this case, there is no contemporaneous medical opinion evidence supporting that the October 3, 1996 employment incident resulted in a personal injury. In his October 10, 1996 medical report, Dr. Yabraian noted that appellant related onset of low back pain caused by a work-related injury. He also noted that appellant told him that there was no previous history of injuries. In the October 11, 1996 medical report, Dr. Yabraian stated that x-rays revealed a significant amount of facet arthrosis from L4-5 to L5-S1 and severe degenerative changes at L5-S1. He found no evidence of spondylolisthesis or spondylolysis. In an October 23, 1996 medical report, Dr. Yabraian stated that the magnetic resonance imaging scan revealed degenerative changes and facet arthrosis but no evidence of spinal stenosis. His medical reports failed to provide a history of the October 3, 1996 employment incident, or to address causal

⁷ *Elaine Pendleton, supra* note 2.

⁸ The Office noted in its decision that appellant had stated that the date of injury was October 5, 1996. However, appellant's statement can be read to mean that on October 5, 1996 appellant felt that the pain had become worse.

⁹ *Louise F. Garnett, 47 ECAB 639 (1996).*

relationship between a diagnosed condition and the October 3, 1996 employment incident and, therefore, are insufficient to support appellant's claim.

The Office advised appellant of the type of medical evidence needed to support his claim, but appellant failed to provide such medical evidence. The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury to his low back and left leg and hip in the performance of duty on October 3, 1996, as alleged.

The decisions of the Office of Workers' Compensation Programs dated January 28, 1997 and November 15, 1996 are affirmed as modified.¹⁰

Dated, Washington, D.C.
March 15, 1999

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ The Board notes that subsequent to the Office's January 28, 1997 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).