

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERTO GONZALES and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, N.M.

*Docket No. 97-1917; Submitted on the Record;
Issued May 5, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T. C. THOMAS

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

On September 29, 1996 appellant, then a 56-year-old mail handler, filed a claim for a traumatic injury, Form CA-1, alleging that on September 16, 1996 he sustained a back injury while trying to separate two "OTR"s which had got stuck together and felt an electric shock in his back. Appellant stopped working on September 19, 1996. On October 1, 1996 employer controverted the claim. Appellant submitted medical evidence to support his claim consisting of progress notes, disability notes, insurance forms and physical therapy reports dated from September 20 through October 22, 1996 and reports, from Dr. Colin Kavanagh, an osteopath and appellant's treating physician, dated October 7 and 15, 1996, which indicated that appellant sustained a lumbosacral strain for which he was being treated. In his October 7, 1996 report, Dr. Kavanagh considered appellant's history of injury and performed a physical examination, in which he observed that appellant was "a little slow getting up and down off the table," appellant's back was tender along the lumbosacral paraspinous muscles bilaterally and appellant wore a back belt for support. He noted that when the back belt was off, appellant felt quite fatigued. Dr. Kavanagh reviewed x-rays, which showed no acute changes and diagnosed acute lumbosacral strain with slow resolution. Further, he stated that appellant would begin physical therapy the next day and, as indicated on an attached duty status report, Form CA-17, appellant could return to work for four hours a day on October 8, 1996 with limited lifting, sitting, standing or walking and the need to change positions frequently. Dr. Kavanagh stated that appellant should not climb or drive.

In his October 15, 1996 report, Dr. Kavanagh noted appellant's improvement upon physical examination and stated that the acute lumbosacral sprain was improving. He stated that appellant would continue with physical therapy, his medication for Motrin would be renewed, and indicated, as shown in an attached Form CA-17, that appellant could perform light-duty work eight hours a day with limited standing, sitting and walking and intermittent lifting of a maximum of 10 pounds. In a Form CA-17 dated October 29, 1996, Dr. Kavanagh requested

gradual advancement of duty. Physical therapist reports documented treatment of appellant's back from October 10 through 22, 1996.

By decision dated November 20, 1996, the Office of Workers' Compensation Programs denied the claim, stating that the evidence of record failed to establish that appellant had sustained an injury as alleged.

On December 22, 1996 appellant requested reconsideration of the Office's decision and submitted additional evidence including reports from Dr. Kavanagh dated September 30 and October 29, 1996, an x-ray dated September 30, 1996 and additional physical therapy reports. In his September 30, 1996 report, Dr. Kavanagh considered appellant's history of injury, performed a physical examination and diagnosed acute lumbosacral sprain. He noted that on physical examination appellant had mild flattening over the lumbar spine, tenderness in the erector spinae muscle mass symmetric L1 through L5/1 and some spasm and guarding with motion testing below the iliac crest. Dr. Kavanagh stated that appellant required time off from work for one week, renewal of his prescription for Flexeril and physical therapy treatment. The September 30, 1996 x-ray showed mild changes of degenerative joint disease and mild narrowing of the L5-S1 disc space level. In his October 29, 1996 report, Dr. Kavanagh found no focal tenderness or spasm on physical examination and full range of motion. He diagnosed "essentially resolved lumbosacral sprain." Dr. Kavanagh stated that appellant could perform his full activities and could continue to wear a back brace. He stated that no further follow-up was anticipated. Physical therapy progress notes dated October 22 and 28, 1996, further documented appellant's treatment.

By decision dated March 11, 1997, the Office modified the November 20, 1996 decision, stating that the evidence of record established fact of injury in that the medical evidence provided a description of the incident and a diagnosis of lumbar strain. The Office denied the claim, however, stating that the medical evidence of record did not establish a causal relationship between appellant's lumbar strain and his employment.

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.¹ 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.²

In the present case, appellant has met his burden of establishing that he sustained a lumbosacral strain at work on September 16, 1996 and that the injury was caused by his employment. The reports of Dr. Kavanagh dated September 30, October 7, 15 and 29, 1996, in which Dr. Kavanagh diagnosed lumbosacral strain based on appellant's history of injury, a physical examination and review of x-rays are sufficiently rationalized and establish that

¹ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

² *Id.*

appellant sustained a lumbosacral strain resulting from the September 16, 1996 employment injury. Dr. Kavanagh's reports as well as the physical therapy reports also document appellant's progress from being unable to work due to his lumbosacral strain, to being able to perform light-duty work and eventually resuming full-time work without restrictions. Appellant has, therefore, met his burden of proof to establish his claim for compensation.

The decisions of the Office of Workers' Compensation Programs dated March 11, 1997 and November 20, 1996, are hereby reversed, and the case is remanded for the Office to determine the nature and extent of appellant's disability and the appropriate payment of compensation and medical benefits.

Dated, Washington, D.C.
May 5, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member