U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DON JONES and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

Docket No. 98-125; Submitted on the Record;
Issued November 9, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on December 3, 1996; and (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's claim for consideration of the merits.

The Board has duly reviewed the case on appeal and finds that it is not in posture for a decision.

Appellant filed a claim on December 3, 1996 alleging that he sustained pain in the right side of his back when a supervisor opened a door into his back. The Office denied appellant's claim by decision dated February 24, 1997. Appellant requested reconsideration and by decision dated July 25, 1997, the Office refused to reopen appellant's claim for consideration of the merits.

Appellant submitted a narrative statement alleging that on December 3, 1996 at approximately 12:00 p.m. he walked into 11132 South Vernon to deliver mail. He stated, "I walked in the building and just as I walked in [my] supervisor, Avies D. Brown, pushed the door into my back." Appellant also submitted a statement to his supervisor stating that on December 3, 1996 at approximately 12:00 noon while delivering mail at 11132 S. Vernon "he walked into the building and just as he walked in Ms. Brown pushed the door into his back."

On December 3, 1996 Ms. Brown submitted a statement. She stated that at approximately 11:45 a.m. appellant entered the building at 11132 South Vernon. Ms. Brown stated that she entered the building behind him and that when the door closed behind them appellant proceeded to place mail in the mail boxes. She indicated that appellant continued to work until 3:30 p.m. and at that time he requested a Form CA-1 and that when she received this form she learned that appellant alleged that she struck him with a door.

A treatment note dated December 3, 1996 indicated that appellant reported acute pain in the right upper back and right shoulder. The note indicated, "Patient states that he entered the office and was behind a door when his supervisor came in through the same door. She flung open the door hard and it hit him over the upper back on the right side." The note reported no visible contusion, but diagnosed right trapezius contusion. This note also indicated that appellant had severe migraine pain. Dr. Meera Kirshnan signed a discharge sheet from the same facility on December 3, 1996 and diagnosed right trapezius contusion and recommended that appellant ice the injured area intermittently. On December 6, 1996 she noted this was a follow-up visit and again diagnosed contused right trapezius. Dr. Kirshman completed a note on December 9, 1996 and stated that appellant's contused trapezius had improved, but that appellant was currently complaining of low back pain.[1]

Appellant completed a narrative statement on January 6, 1997 and stated that he was injured while delivering mail to 11132 South Vernon when his supervisor hit him with the door. Appellant stated that he had entered the hall to place the mail in the box, that his supervisor opened the door and that the door struck him in the back of the head and the upper part of his "rightside back." This is the first mention of an injury to his head.

Ms. Brown submitted a statement on February 4, 1997 and stated:

> "After we both entered into the building, [appellant] and I were standing to the right of the door. As the door began to close, [appellant] stepped over to the left in front of the door to begin placing the mail into the mail boxes. I was still standing to the right of the door next to the wall. [Appellant] was not aware that I entered into the building behind him."

Ms. Brown stated that the door did not hit appellant.

Following the Office's February 24, 1997 decision, appellant submitted a witness statement from Chris Burns. Mr. Burns stated that he witnessed a supervisor push the door on a letter carrier at 12:00 p.m. at 11132 S. Vernon.

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.[2] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[3] An alleged work incident does not have to be confirmed by

[1] On December 12, 1996 Dr. Kirshnan noted appellant's complaints of a migraine and his hostile behavior. She stated on December 9, 1996 appellant presented a new complaint and that she believed he was exaggerating his symptoms.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

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

eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[4] A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[5]

In this case, appellant has provided a consistent history of injury on his claim form, his statements to the employing establishment, to the Office and to his physician on the date the alleged injury occurred. Appellant has also provided a statement from a witness supporting that the incident occurred as alleged. The Board finds that appellant's statements are sufficiently consistent to establish that the incident occurred as alleged.

The second component is whether the employment incident caused a personal injury and that 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.[6]

In this case, appellant submitted a series of treatment notes from Dr. Krishnan noting his history of injury and diagnosing right trapezius contusion. His notes contain a history of injury and diagnosis. While these notes are not sufficient to meet appellant's burden of proof, they do raise an uncontroverted inference of causal relation between appellant's accepted employment incident on December 3, 1996 and his diagnosed condition of right trapezius contusion and are sufficient to require the Office to undertake further development of appellant's claim.[7]

[4] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[5] *Id.* at 255-56.

[6] *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

[7] *John J. Carlone*,41 ECAB 354, 358-60 (1989).

The decisions of the Office of Workers' Compensation Programs dated July 25 and February 24, 1997 are hereby set aside and remanded for further development consistent with this opinion.

Dated, Washington, D.C.
November 9, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member