U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GIA DINH LE and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

Docket No. 98-124; Submitted on the Record;
Issued October 21, 1999

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has established that he sustained an injury in the performance of duty on December 29, 1995.

On December 29, 1995 appellant, then a 32-year-old carrier, filed a claim for compensation alleging that he injured his lower neck and back that day while in the performance of duty. In a section of the claim form for a description of the injury, appellant stated that employees laughed at his request for help, that the mail hampers were heavy and that he felt a pop or pull on the lower neck and that he injured his knee when a hamper of mail fell upon it.

On April 2, 1996 the Office of Workers' Compensation Programs advised appellant it would need more information in order to process his claim. In a decision dated April 24, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that appellant sustained an injury on December 29, 1995. On August 21, 1996 appellant requested reconsideration. On October 10, 1996 the Office, in a merit decision, denied appellant's request. On January 8, 1997 appellant requested reconsideration. On January 15, 1997 the Office, in a merit decision, denied appellant's request. On July 2, 1997 appellant requested reconsideration. On September 10, 1997 the Office, in a merit decision, denied appellant's request.

The Board finds that appellant has failed to establish that he sustained an employment injury on December 29, 1995 as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 timely filed within the applicable time limitation period of the Act, that an injury was

[1] 5 U.S.C. §§ 8101-8193.

sustained in the performance of duty as alleged and that any disability and/or specific condition, for which compensation is claimed are causally related to the employment injury.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

In order to determine whether an employee actually sustained an injury in the performance of his 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.[4] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident 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 statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6] 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.[7] Such circumstances as late notification of injury, confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast sufficient doubt on an employee's statements in determining whether he has established a *prima facie* case.[8] The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.

The second requirement for establishing fact of injury is that the employee must submit sufficient evidence, usually in the form of medical evidence, to establish that the employment incident caused a personal injury.[9]

There is insufficient evidence in the file regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged. Although appellant indicated on the application form that he injured himself on December 29, 1995 the employing

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[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Elaine Pendleton*, *supra* note 2.

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

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

[7] *Id*.

[8] *Karen E. Humprey*, 44 ECAB 908 (1993).

[9] *John J. Carlone*, *supra* note 5.

establishment controverted the claim noting that appellant had also filed a claim for recurrence of disability on December 28, 1995 alleging that his neck and back "do n[o]t seem to be getting better because of all the overtime and heavy mails…." Although appellant sought medical treatment on December 30, 1995 the doctor's medical report presents a diagnosis of lumbar strain and thoracic strain but fails to provide a history of the injury or any relationship between the condition and appellant's employment. Further, the doctor returned appellant to work that day noting that he had already been assigned to light-duty work. It further appears that appellant was able to perform his limited duties without difficulty after the alleged incident. Moreover, the Office provided appellant with the opportunity to cure the deficiencies in the claim, but he failed to submit any evidence establishing that the claimed event, incident, or exposure occurred at the time, place and in the manner alleged.[10] The Board finds that appellant has failed to meet his burden of proof in establishing that the alleged incident occurred as alleged. Therefore, appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty.

The decisions of the Office of Workers' Compensation Programs dated September 10 and January 15, 1997 are hereby affirmed.

Dated, Washington, D.C.
October 21, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member

[10] The Board notes that appellant alleged that he had asked dock workers to help him lift mail hampers on the night he injured himself, but appellant was unable to provide names of any witnesses to the alleged incident.