U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NELWYN J. COTTRELL and U.S. POSTAL SERVICE,
POST OFFICE, Oakland, CA

Docket No. 98-954; Submitted on the Record;
Issued October 28, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury on March 24, 1997 as alleged.

On May 25, 1997 appellant, then a 50-year-old clerk, filed a notice of traumatic injury and claim, alleging that on March 24, 1997 she injured her back, neck and shoulder when a "tub" of mail was pushed into the back of her chair. Appellant stopped work on March 26, 1997. The employing establishment controverted appellant's claim, asserting that appellant was alleging the same injuries as she had in four previous claims which were now closed with the Office of Workers' Compensation Programs and appellant could not have been injured when the tub of mail struck her back because she was in a steel chair weighing approximately 20 pounds which would not have moved if a hamper hit it. In a decision dated May 30, 1997, the Office denied appellant's claim on the grounds that the evidence of record was not sufficient to establish that appellant sustained an injury as alleged. The Office found that the employing establishment submitted evidence which cast serious doubt on appellant's recitation of the facts. By decision dated December 29, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish the modification of the prior decision was warranted.

The Board has duly reviewed the entire case record on appeal and finds that this case is not in posture for decision.

A person who claims benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of her claim, including that she sustained an injury while in the performance of duty and that she had disability as a result.[2] In accordance with the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Daniel R. Hickman*, 34 ECAB 1220 (1983); *see* 20 C.F.R. § 10.110(a).

Federal (FECA) Procedure Manual, in order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components which must be considered one in conjunction with the other. The first component to be established is that the employee actually experienced the employment incident or exposure which is alleged to have occurred.[3] The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.[4] The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.[5] The belief of claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.[6]

In the present case, the Office denied appellant's claim on the grounds that she had not established that she sustained an incident as alleged. The Office found that appellant provided inconsistent statements concerning the mechanism of employment incident and that injury could not have occurred as alleged because the employing establishment submitted evidence that demonstrated that the force of the collision was not sufficient to move the steel chair in which appellant was sitting. However, a review of the record reveals that appellant did not make inconsistent statements when she filed her claim, and moreover, her statement is consistent with the statements by both Roy Washington, who pushed the tub of mail in question and Tess Blandung, who acknowledged that appellant's chair had been hit by a tub of mail on March 25, 1997. While the issue of whether appellant could have sustained an injury from the impact is in question, the witness statements provided by the employing establishment do not rule out that appellant's chair was hit as she indicated. In addition, while the history provided by Dr. William Ross is not consistent with appellant's statement that her chair and not her back was hit by the tub of mail, the statement provided to another doctor on March 26, 1997, the day before the report by Dr. Ross is consistent with the statement on her claim form. It is also noted that the crux of the employing establishment's argument is that appellant could not have been injured by this incident as it had recreated the accident and the chair did not move. The employing establishment submitted photographs to support its contention. However, the photographs demonstrate that the employing establishment's recreation of the incident was flawed as there was no one sitting in the chair and the tub was empty as opposed to containing mail. The photographs cannot establish how hard the tub was pushed to make contact with the chair. Thus, this cannot be construed as probative evidence which casts serious doubt on appellant's statement of the facts. Rather, appellant has established that her chair was hit by a tub of mail as alleged and has substantiated the first prong of the fact of injury test. The issue of whether this contact caused any injury is a medical determination that must be made by a physician. As the Office did not review the medical evidence, this case must be remanded for

[3] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.(2)(a) (June 1995).

[4] *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

[5] *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

[6] *Manuel Garcia*, 37 ECAB 767 (1986).

review of the same and a determination of whether appellant was injured on March 25, 1997. After such further development as the Office deems necessary a *de novo* decision on the merits shall be issued.

The decisions of the Office of Workers' Compensation Programs dated December 29 and May 30, 1997 are hereby set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
October 28, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member