

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JULIUS JORDAN and U.S. POSTAL SERVICE,
POST OFFICE, Gulfport, MS

*Docket No. 98-1832; Submitted on the Record;
Issued January 31, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof in establishing that he sustained an injury in the performance of duty.

On November 27, 1996 appellant filed a (Form CA-1) notice of traumatic injury and claim for compensation alleging that he hurt his back while mopping workroom floors. The date of injury was listed as September 17, 1996.

In a statement dated November 27, 1996, appellant's supervisor indicated that appellant had not informed him of a work injury until that date. He specifically stated:

“On September 18, 1996 [appellant] called in sick and did not return to work until September 30, 1996. Upon return to work he provided me with documentation stating that he was under a [d]octors care for arthritis [sic]. On October 9, 1996 [appellant] called in sick stating that he had leg cramps and could not get out of bed. [Appellant] has had a back operation and been on sick leave since that date. On November 27, 1996 [appellant] came to my office wanting to fill out an accident report saying that he hurt his back on the job. This date is the first time that I have heard from [appellant] that he was injured on the job.”

In support of his claim, appellant submitted a series of emergency room treatment notes from Memorial Hospital Gulfport. In a note dated September 18, 1996, the nurse recorded that appellant presented with complaints of “lower back pain starting last week” but that there was no known injury. In a note dated September 23, 1996, the nurse reported appellant's low back pain but indicated that there had been “no recent injury” and that appellant had a history of back problems. In notes dated October 8 and 12, 1996, the nurse indicated that appellant had been seen for arthritis and complained of low back pain with radiculopathy.

In a November 4, 1996 report, Dr. Victor T. Bazzone, a neurological surgeon, noted that appellant was referred for problems of low back pain and radiation into the left lower extremity “which began while [appellant] was working, but [were] not associated with any specific injury at his place of employment.” Dr. Bazzone related that “on the day in question”¹ appellant experienced some mild pain in the lumbar area best described as a “nag,” which did not incapacitate appellant to the point he was unable to work, but which did progress to the point where it was constant and fairly severe pain. According to him, appellant had similar pain approximately one or two years ago which remitted after three days. Dr. Bazzone also related that appellant had not had any further back pain until his recent episode of pain at work. Based on an October 23, 1996 magnetic resonance imaging (MRI) report, he diagnosed a completely extruded disc at L5-S1. He recommended that appellant undergo a laminectomy and discectomy, which he later performed on November 14, 1996.

By letter dated December 16, 1996, the Office requested additional information and medical evidence as to the nature of appellant’s injury, including a rationalized medical opinion addressing the causal relationship between the alleged work incident on September 18, 1996 and appellant’s back condition.

In a statement dated December 30, 1996, appellant noted that his injury was latent to the extent that “there was nothing obvious, such as a slip and fall, which brought to appellant’s mind that he had suffered an injury. He recalled having mopped the workroom floor, and that, at the end of the day, his lower back was aching; that he could n[o]t straighten up the next day when he got out of bed and went to the emergency room. Appellant stated that he still did not connect his symptoms with work since there was no “accident” which appellant could recall, given the general meaning of the term. He indicated that he was first told that he had arthritis in his lower back and believed arthritis was the cause of his back symptoms until an MRI scan confirmed a broken disc with nerve involvement and Dr. Bazzone associated that condition with appellant’s work duties. He concluded that in hindsight he could only guess that his injury occurred due to his body movements associated with mopping the floor while on duty, and that his condition progressed and was aggravated by subsequent work he performed on a compressor, which required bending and lifting.

In a decision dated January 29, 1997, the Office denied appellant’s claim on the grounds that he failed to establish fact of injury.

By letter dated February 22, 1997, appellant requested a hearing, which was held on January 13, 1998.

Appellant submitted a copy of medical treatments notes from Orange Grove Medical Hospital. A September 25, 1996 note reported: “Back pain has moved down his left leg. Needs Physical. Left hip pain radiates [down] left leg. [About] [two] years ago started having back pain - was Dr. Hughes [for] sciatica [which improved until two weeks ago]. Back pain has stopped but now has pain radiating [down] leg.” The diagnosis was listed as probable sciatica. Other records dated October 9, 15, 21 and 28, 1996 gave no history of injury.

¹ His report does not specifically reference a work incident on September 17, 1996.

Appellant also submitted medical records from Dr. Thomas F. Hewes, a Board-certified orthopedic surgeon, dating from August 6 to October 4, 1993, which indicated that appellant was treated with injections and physical therapy for right hip pain. Although the doctor suspected that appellant suffered from early degenerative disease, he noted on August 30, 1993 that appellant had a negative MRI scan.

In a decision dated February 23, 1998, an Office hearing representative affirmed the Office's January 29, 1997 decision.

The Board finds that appellant failed to meet his burden of proof to establish that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² 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 of the Act, that an injury was 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.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury which must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place, and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁶ The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence.⁷

The Office in the present case determined that appellant failed to submit sufficient evidence to establish that he experienced the employment incident in the time, place and manner alleged. The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged, or whether the alleged injury was in the performance of duty.⁸ Nor can the

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *Id.*

⁷ *Id.*

⁸ *Elaine Pendleton*, *supra* note 3.

Office find fact of injury if the evidence fails to establish that the employee sustained an “injury” within the meaning of the Act. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and his subsequent course of action.⁹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may cast doubt on an employee’s statements in determining whether he or she has established his or her claim.¹⁰

Contrary to the Office’s analysis, however, the Board finds that there are no serious inconsistencies in the record to dispute appellant’s claim that he was mopping on September 17, 1996 and later developed back pain. The emergency treatment records from Gulfport Memorial Hospital dated September 18, 1996 verify that appellant sought treatment for back pain the day after the alleged employment activity. While the medical records note no specific “injury” on that date, the Board has held that there is no necessity to show special exposure or unusual conditions of employment in the factors producing disability.¹¹ It was sufficient for appellant to allege that his back condition was caused by an employment factors.¹² Moreover, the fact that appellant may have experienced back pain prior to the alleged employment incident or that appellant may have had a preexisting back condition does not preclude the occurrence of a subsequent employment injury.¹³

Additionally, although appellant filed a traumatic injury claim, he noted that he could only guess that his injury occurred due to his body movements associated with mopping the floor while on duty, and that his condition progressed and was aggravated by subsequent work he performed on a compressor, which required bending and lifting. Since appellant has cited work

⁹ See *Gene A. McCracken*, 46 ECAB 593 (1995); *Joseph H. Surgener*, 42 ECAB 541 (1991).

¹⁰ See *Constance G. Patterson*, 41 ECAB 206 (1989).

¹¹ *Geraldine Sutton*, 46 ECAB 1026 (1997).

¹² Appellant’s supervisor stated that appellant returned to work on October 9, 1996 and told him that he was under treatment for arthritis. Appellant, however, adequately explained that he was unaware that his back condition might be related to his work duties until he was notified of the results of October 23, 1991 MRI report finding an extruded disc. When he returned to work on November 27, 1996 following his back surgery for the extruded disc, he immediately filed a claim for compensation.

¹³ See *Willie Clements, Jr.*, 43 ECAB 244 (1991).

factors on two separate days, his claim may be more accurately categorized as an occupational disease claim as opposed to a traumatic injury claim.¹⁴

Notwithstanding, the Board also finds that appellant failed to submit rationalized medical opinion evidence to establish that his back condition is causally related to the September 17, 1996 work incident or factors of his employment. In support of his claim, appellant submitted a November 4, 1996 report from Dr. Bazzone. While Dr. Bazzone noted that appellant's back problems began at work, he did not explain with medical reasoning why specific employment factors on a particular date would cause or aggravate appellant's back condition.¹⁵ In fact, Dr. Bazzone provided no opinion whatsoever as to the cause of appellant's extruded disc. Therefore, despite being advised by the Office of the deficiencies in his medical evidence, appellant failed to submit a rationalized opinion addressing the issue of causal relationship and consequently failed to discharge his burden of proof. Other medical evidence submitted by appellant does not specifically address the cause of appellant's claimed condition. Accordingly, the Office properly denied the claim.

The decision of the Office of Workers' Compensation Programs dated February 23, 1998 is hereby affirmed.

Dated, Washington, D.C.
January 31, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

¹⁴ The primary difference between a traumatic injury and an occupational disease is that a traumatic injury must occur within a single work shift while an occupational disease occurs over more than one work shift; *see* 20 C.F.R. § 10.5(a)(14-16); 20 C.F.R. § 10.20.

¹⁵ The fact that a condition manifests itself or worsens during a period of employment, or that work activities produce symptoms revelatory of an underlying condition, does not raise an inference of causal relationship between the claimed condition and the employment factors. *Ruby I. Fish*, 46 ECAB 276 (1994).