

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOSEPH C. KREBSBACH and U.S. POSTAL SERVICE,
POST OFFICE, Cascade, WI

*Docket No. 99-1497; Submitted on the Record;
Issued July 25, 2000*

DECISION and ORDER

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

The issue is whether appellant established that he sustained an injury in the performance of duty on April 22, 1998.

On November 16, 1998 appellant, then a 48-year-old rural carrier, filed a notice of traumatic injury and claim for compensation alleging that on April 22, 1998 he sustained a hernia while lifting a tub of mail from the floor to a sorting desk. Appellant supervisor's noted on the back of the CA-1 form that his knowledge of the facts of the injury agreed with the statements of appellant.

In a statement prepared on December 14, 1998, appellant advised that he reported his lifting injury to the postmaster on the day it occurred because he had to go to the doctor that afternoon. He described his injury as having occurred when he lifted a tub of mail weighing approximately 50 pounds to a sorting desk. Appellant stated that he initially thought the pain was related to his appendix.

In support of his claim, appellant submitted several medical treatment notes from the Sheboygan Clinic. In a treatment note dated April 22, 1998, Dr. Chanda Kapur, a family practitioner, noted that appellant came in saying he had appendicitis and complained of pain in his right iliac fossa, almost in the pelvic area. There was no notation of the alleged lifting incident that day. Dr. Kapur stated that the pain did not seem like appendicitis.

In a treatment note dated October 19, 1998, Dr. Kapur noted that appellant complained of pulling in the groin area going up to the abdomen and that according to appellant, "the pain came on real sharp after doing some lifting" several months ago. Dr. Kapur diagnosed a right inguinal hernia and recommended surgery. He noted that appellant wanted to defer surgery until after the hunting season and that appellant agreed to be cautious about his lifting.

In an attending physician's report dated December 8, 1998, Dr. William P. Chleborad, a Board-certified surgeon, diagnosed a right inguinal hernia and listed the date of injury as November 30, 1998.

In a "Return to Work Record" report, prepared by Dr. Chleborad on December 31, 1998, he again diagnosed a right inguinal hernia but listed the date of injury as December 1, 1998. Dr. Chleborad indicated that appellant could return to work on January 4, 1999.

By decision dated January 12, 1999, the Office denied compensation on the grounds that appellant failed to establish fact of injury.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on April 22, 1998.¹

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 that 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.² Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.³ The medical evidence required to establish causal relationship, generally is rationalized medical opinion evidence.

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between his condition and his employment.⁴ To establish causal relationship, appellant must submit a physician's report in which the physician reviews the factors of employment identified by appellant as causing his injury and, taking these into consideration as well as findings upon examination of appellant and appellant's medical history, state whether these employment factors caused or aggravated appellant's diagnosed conditions and present medical rationale in support of his opinion.⁵

In the instant case, the Office determined that appellant failed to establish fact of injury because the substantial evidence of record did not show the occurrence of an employment incident at the time, place, and in the manner alleged by appellant. Contrary to the Office's determination, the Board concludes that an employment incident occurred on April 22, 1998 based on appellant's December 14, 1998 statement. Appellant stated that he reported having pain in his side after lifting a 50-pound tub of mail to his supervisor on April 22, 1998 and that

¹ Appellant submitted evidence after the Office's January 12, 1999 decision, however, the Board's jurisdiction is limited to reviewing evidence that was before the Office at the time of its final decision. 20 C.F.R. § 501.2(c).

² See *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Id.*

⁴ See *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Id.*

his supervisor released him from work that afternoon to seek medical assistance. Appellant's supervisor acknowledged appellant's relation of events on April 22, 1998 to be true on the CA-1 form. Since appellant's statement regarding an incident is given great weight⁶ and in the absence of probative evidence refuting the incident as alleged, the Board finds that appellant has established an employment incident on April 22, 1998.

The medical record, however, does not support that appellant sustained an employment injury. Treatment records from appellant's treating physician's indicate that he was diagnosed with a hernia in October 1999, six months after the April 22, 1998 lifting incident, but there is no medical opinion evidence to establish that appellant's hernia was causally related to that lifting incident. In the absence of any medical evidence attributing appellant's hernia to the April 22, 1998 employment incident, the Board finds that appellant failed to establish fact of injury.

The decision of the Office of Workers' Compensation Programs dated January 12, 1999 is hereby affirmed, as modified.

Dated, Washington, D.C.

July 25, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁶ *Thelma Rogers*, 42 ECAB 866 (1991).