

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LARRY ALEXANDER and U.S. POSTAL SERVICE,  
POST OFFICE, New Orleans, LA

*Docket No. 99-1739; Submitted on the Record;  
Issued July 18, 2000*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issues are: (1) whether the Office of Workers' Compensation Programs properly found that appellant failed to establish that he sustained an injury on July 13, 1997 causally related to his federal employment; and (2) whether the Office properly refused to reopen appellant's claim for a merit review on September 2, 1998.

On July 31, 1997 appellant, then a 47-year-old mailhandler, filed a notice of traumatic injury alleging that he injured his left testicle on July 13, 1997 when he lifted a sack in the course of his federal employment. Appellant's supervisor stated that appellant reported a "sensation" on July 10, 1997 after lifting a box and that on July 13, 1997 appellant told him that he hurt his testicle, but he did not report an accident.

On July 16, 23 and 30, 1997 Dr. Robert A. Bloom, appellant's treating physician and a Board-certified urologist, diagnosed epididymitis and stated that appellant could return to work, if he did not lift anything over five to ten pounds.

In an affidavit dated August 4, 1997, Troy Lee Davis, a coworker, stated that appellant reported pain in his groin area to his supervisor on July 13, 1997. Similarly, in an affidavit dated August 4, 1997, coworker Patrice Jinkins stated that she witnessed appellant report a testicle injury to his supervisor on July 13, 1997.

On August 20, 1997 the Office requested additional information, including a physician's opinion supported by medical rationale addressing the causal relationship between his condition and the injury reported.

In a statement received August 25, 1997, appellant again indicated that he experienced a painful sensation in his left testicle after lifting several sacks of mail on July 13, 1997. He further stated that he informed his supervisor of the incident and that both Mr. Davis and

Ms. Jenkins witnessed the reporting. Appellant stated that his supervisor thought his report of the testicle injury was a joke.

On September 15, 1997 appellant again stated that he was lifting a box when he felt pain in his left testicle. He stated that he called his family doctor on July 14, 1997 and was referred to a urologist on July 16, 1997.

By decision dated September 23, 1997, the Office found that the evidence in the file supported that appellant experienced the claimed event. It found, however, that the evidence did not establish that a condition has been diagnosed in connection with the event. Consequently, it found that an injury within the meaning of the Federal Employees' Compensation Act was not demonstrated. In this regard, the Office stated that the record contained no medical evidence, with rationale, describing how the incident resulted in the diagnosed condition. Accordingly, the Office rejected appellant's claim.

In a report received by the Office on September 26, 1997, Dr. Bloom again diagnosed epididymitis. On September 30, 1997 Dr. Bloom stated that he first saw appellant on July 16, 1997. He stated that appellant told him that, on July 10, 1997, he felt a twinge or tenderness in the left scrotum. Moreover, appellant told him that on July 13, 1997 he lifted some heavy bags and reactivated the injury. Dr. Bloom concluded that appellant was treated for left epididymitis with significant improvement.

On March 3, 1998 appellant requested reconsideration.

Appellant subsequently submitted progress notes from Dr. Bloom dated July 23 and 30, August 20 and September 22, 1997 diagnosing left epididymitis and indicating the treatment appellant received for the condition. In addition, the record contains undated reports from Dr. Bloom also diagnosing the same condition and noting the treatment applied.

By decision dated April 20, 1998, the Office denied modification of the prior decision. In this regard, the Office found that appellant failed to meet his burden of establishing that he actually experienced the alleged injury at the time, place and in the manner alleged. The Office stated that there were inconsistencies in the claim because appellant did not give prompt notice of the injury or seek immediate medical attention. It further noted that there were no direct witnesses of the injury and that contemporaneous medical records failed to mention the work injury. The Office further indicated that one of appellant's witnesses provided an affidavit stating that appellant had a groin injury on July 10, 1997, while another witness stated the injury was reported on July 13, 1997.

On August 20, 1998 appellant requested reconsideration. In a letter dated July 20, 1998 and with comments written a copy of the Office's prior decision, appellant urged that the alleged injury did occur at the time, place and in the manner alleged. Appellant stated that he told his supervisor on July 10, 1997 that he felt a twinge in his groin and that on July 13, 1997 he officially told his supervisor of another injury he experienced lifting heavy articles on that day. He indicated that the notice of traumatic injury form, CA-1, allowed him 30 days to report his injury. Appellant noted that two witnesses stated that he reported the injury on July 13, 1997. Moreover, he indicated that the Office erred in finding that one witness, Mr. Davis, saw

appellant report the injury to his supervisor on July 10, 1997, because his affidavit, written in poor penmanship, actually stated that the injury was reported to the supervisor on July 13, 1997. He stated that he never told his supervisor that he was okay following his injury and that he officially reported the injury on July 13, 1997.

By decision dated September 2, 1998, the Office found that the evidence submitted in support of the request for review was found to be repetitious and insufficient to warrant review of the prior decision. In an accompanying memorandum, the Office stated that appellant failed to submit new or relevant evidence, or make new legal arguments.

The Board finds that the case is not in posture for a decision.

An employee seeking benefits under the Act<sup>1</sup> 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 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.<sup>2</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>4</sup> To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant’s statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

In its April 20, 1998 decision, the Office found that appellant failed to establish that he sustained an injury at the time, place and in the manner alleged and denied appellant’s claim

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989)

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>6</sup> *Id.*

solely on that basis. Appellant, however, provided a consistent account of his injury, which was confirmed by his supervisor, two coworkers and his treating physician. He stated that he injured his left testicle on July 13, 1997 when he lifted a sack in the course of his federal employment. Appellant's supervisor confirmed that appellant told him that he hurt his testicle on July 13, 1997. Moreover, appellant's coworkers, Mr. Davis and Ms. Jenkins, both submitted affidavits indicating that they witnessed appellant inform his supervisor of the injury on July 13, 1997.<sup>7</sup> Finally, appellant's treating physician, Dr. Bloom, a Board-certified urologist, also stated on September 30, 1997 that appellant told him that he injured his testicle while lifting a bag on July 13, 1997. Consequently, appellant's consistent account; bolstered by the statements of his supervisor, coworkers and treating physician; and uncontradicted by any other evidence of record; establishes that the alleged injury occurred at the time, place and in the manner alleged. As the Office found that appellant failed to establish that the alleged injury occurred at the time, place and in the manner alleged, it did not analyze or develop the medical evidence to determine whether the employment incident caused a personal injury.<sup>8</sup> The case will therefore be remanded to the Office for this purpose. After such development as deemed necessary, the Office should issue an appropriate decision on this matter.<sup>9</sup>

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<sup>7</sup> The Office stated that Mr. Davis' affidavit indicates that appellant reported the injury to his supervisor on July 10, 1997. However, a review of that affidavit indicates that Mr. Davis wrote in nearly illegible handwriting that appellant reported the injury on July 13, 1997.

<sup>8</sup> In its decision dated September 23, 1997, the Office found that appellant established that he experienced the claimed event, but that the evidence failed to establish any condition diagnosed in connection with the event. The Board, however, lacked jurisdiction to consider this decision because it was issued over a year prior appellant's filing of his appeal on April 13, 1999; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

<sup>9</sup> Because this case will be remanded for the Office to issue a *de novo* decision, the Board need not address whether the Office erred in denying appellant's request for a merit review in its September 2, 1998 decision.

The decisions of the Office of Workers' Compensation Programs dated September 2 and April 20, 1998 are set aside and the case remanded for further action consistent with this decision.

Dated, Washington, D.C.  
July 18, 2000

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

Michael E. Groom  
Alternate Member