

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARAH K. REECE and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, TX

*Docket No. 98-2190; Submitted on the Record;
Issued June 12, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty.

On September 24, 1996 appellant, then a 40-year-old distribution clerk, filed a traumatic injury claim (Form CA-1), assigned number 16-0285667, alleging that on November 8, 1995 she sustained a back and a left groin injury while lifting parcels and throwing them on a daily basis.

In an October 3, 1996 letter, the employing establishment controverted appellant's claim on the grounds that her claim was not filed within 30 days as required by law.

By letters dated October 22, 1996, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish her claim. The Office then advised her to submit factual and medical evidence supportive of her claim.

By decision dated November 12, 1996, the Office found the evidence of record insufficient to establish that appellant actually experienced the claimed incident at the time, place and in the manner alleged.

On December 4, 1996 appellant, through her counsel, requested an oral hearing before an Office representative. By letter dated March 11, 1997, the Office advised appellant to request a review of the written record because a hearing could not be scheduled in a timely manner.

In a March 16, 1998 decision, the hearing representative affirmed the Office's November 12, 1996 decision. The hearing representative found the evidence of record

insufficient to establish that appellant actually experienced the claimed incident and that she sustained an injury-related condition.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 limitations 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.² These are the essential elements of each and every 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 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 The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background, supporting such a causal relationship.⁵

Regarding the first component, appellant alleges that she sustained a back and a groin injury on November 8, 1995. An injury does not have to be confirmed by eyewitnesses in order to establish 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 her subsequent course of action. 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 sufficient doubt on an employee's statements in determining whether she has established a *prima facie* case. 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.⁶

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

⁶ *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

At the hearing, appellant testified that “[o]n the day that I got injured, November 8, 1995, I went in and told my supervisor, which was Ray Hernandez, that I had gotten injured. He said okay, you can go home.” In support of her statement, appellant submitted a handwritten note from Mr. Hernandez dated October 2, 1997. In this note, Mr. Hernandez stated that “[appellant] did inform me of back pain on November 8, 1995.” Appellant also testified at the hearing that she went home for a couple days and when she returned to work around the [November 17, 1995] she told Mr. Hernandez that she “needed to go see a doctor right now.” The record reveals the November 17, 1995 medical treatment notes of Dr. M. Cherkassky, a Board-certified internist. In these notes, he indicated that appellant was treated for her back, pelvic and both hips. Dr. Cherkassky stated that appellant’s low back pain was aggravated by lifting more than 10 pounds. Appellant also submitted his October 15, 1997 medical report wherein he stated that appellant described “an on[-]the[-]job injury she received on November 8, 1995” to him during an office visit on November 17, 1995. Dr. Cherkassky further stated that “[appellant] described to me the time, the activity and her hopes that it would resolve itself but constant pain and the exacerbation of her injury caused her to seek medical attention.” Although appellant’s claim was filed more than 10 months after the November 8, 1995 incident, the Board finds that appellant’s and Mr. Hernandez’s statements and Dr. Cherkassky’s medical treatment notes and report provide a consistent history of injury and that appellant initially received medical treatment a short time after the incident occurred. The Board finds that, under the circumstances, appellant’s allegation has not been refuted by strong or persuasive evidence. The Board, therefore, finds that the evidence of record supports that the incident occurred at the time, place, and in the manner alleged.

Regarding the second component, however, the Board finds that appellant has failed to establish that her back and groin injuries were caused by the November 8, 1995 employment incident. The only medical evidence of record which addresses a causal relationship between appellant’s injuries and the November 8, 1995 employment incident is Dr. Cherkassky’s October 15, 1997 medical report. In addition to noting that appellant described the activity that caused her conditions, he opined that, upon physical examination, appellant’s injury fit the profile of the activities she performed on November 8, 1995. Dr. Cherkassky concluded that appellant’s injury occurred in the performance of duty. His medical report is insufficient to establish appellant’s burden because he failed to provide a diagnosis for appellant’s injuries. In addition, Dr. Cherkassky failed to provide any medical rationale explaining how or why appellant’s injuries were caused by the November 8, 1995 employment incident. Therefore, appellant has failed to satisfy her burden of proof in this case.

The March 16, 1998 decision of the Office of Workers' Compensation Programs' hearing representative is hereby reversed in part with regard to the finding that the evidence of record was insufficient to establish that the incident occurred at the time, place and in the manner alleged and affirmed in part, with regard to the finding that appellant failed to establish that she sustained an employment-related injury on November 8, 1995.

Dated, Washington, D.C.
June 12, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

A. Peter Kanjorski
Alternate Member