

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANCIS X. RUSSELL and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 99-628; Submitted on the Record;
Issued May 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury, while in the performance of his duties on November 29, 1993.

On the prior appeal,¹ the Board found that enough uncertainty existed in the factual evidence concerning the history of appellant's injury, that the weight of the evidence failed to establish that he sustained an injury at the time, place and in the manner alleged. The facts of this case are related in the Board's prior decision and are hereby incorporated by reference.

Briefly, a December 3, 1993 treatment note provided the most contemporaneous history: "Found a hanging nail and pulled it. Since then swelling worse. Punctured with a needle Wednesday [December 1, 1993] had some pus. Problems worse since then with fever up to 102." On his December 21, 1993 claim form, appellant described a different cause of injury: "A paper cut that got infected from a combination of the relays and packages I deliver." Appellant stated that he had spoken to the station manager about this on December 13, 1993. Appellant's supervisor reported that appellant had originally stated that something was under his thumbnail and he pulled it out. The supervisor stated that appellant had not reported an on-the-job paper cut until December 21, 1993.

¹ Docket No. 95-2563 (issued August 11, 1997).

On July 21, 1998 appellant requested reconsideration. In support, thereof, he submitted new evidence, a February 5, 1998 report from his attending physician, Dr. Paul F. Kasuba, a Board-certified specialist in internal medicine. He stated: Dr. Kasuba reported as follows:

“I am writing a letter on [appellant’s] behalf regarding recent worker’s compensation claims. Please see my enclosed letter from February 7, 1994. As noted here, [appellant] initially was not sure what had triggered his symptoms but felt that very likely his cellulitis was attributable to paper cuts that he received while at work. This likely could have produced a perionychia along the edge of the left thumb that subsequently developed into cellulitis. Based upon this, it is certainly possible that this is a work-related injury. I hope that this would be taken into consideration when reassessing [appellant’s] claim.”

In a decision dated October 21, 1998, the Office of Workers’ Compensation Programs reviewed the merits of appellant’s claim and denied modification of its prior decision.

The Board finds that the evidence fails to establish that appellant sustained an injury, while in the performance of his duties on November 29, 1993.

A person who claims benefits under the Federal Employees’ Compensation Act² has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the essential elements of his claim, including the fact that he sustained an injury at the time, place and in the manner alleged.³ 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 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.⁴

The February 5, 1998 report of Dr. Kasuba is insufficient to establish that appellant’s injury arose from a paper cut sustained in the course of his employment. Given full weight, this evidence supports that appellant initially was not sure what had triggered his symptoms but felt that very likely his cellulitis was attributable to paper cuts received, while at work. Appellant’s initial uncertainty is alone sufficient to cast some doubt on his subsequent account of a paper cut. When considered together with the contemporaneous medical history of pulling a hangnail and with appellant’s original statement to the supervisor that he pulled something out from under his thumbnail, the doubt becomes substantial. That appellant subsequently felt that his cellulitis was very likely attributable to paper cuts received at work does not resolve the apparent

² 5 U.S.C. §§ 8101-8193.

³ *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

⁴ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

inconsistencies in the factual evidence.⁵ Dr. Kasuba's February 5, 1998 report fails to resolve the inconsistent history of injury reported on December 3, 1993 and the inconsistent statement made to the supervisor. Because there remain such inconsistencies in the evidence as to cast serious doubt on the validity of his claim, appellant has not met his burden of proof.

The October 21, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 10, 2000

Michael J. Walsh
Chairman

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

⁵ See *Herman Pischel*, 26 ECAB 280 (1975) (a contemporaneous statement describing an incident is entitled to greater weight than a different description by the same person made after an interval of several months or years).