U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HAROLD L. JOHNSON and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

Docket No. 99-2102; Submitted on the Record;
Issued November 3, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on or about February 4, 1999.

On February 19, 1999 appellant, then a 61-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation, alleging that, on February 4, 1999, while lifting a sack to put in the relay box, he felt a pull in both wrists. The employing establishment controverted the claim, contending that appellant was not working on February 4, 1999, and accordingly, could not have injured himself on that date.

By letter dated March 11, 1999, the Office of Workers' Compensation Programs requested that appellant submit further information. Appellant responded to various questions propounded by the Office on March 15, 1999, wherein he indicated that initially the injuries did not present a problem, and that only after the pain and swelling persisted did he seek medical attention. Appellant stated that he sustained the injuries performing his duties of relaying mail, and stated that the incident must have occurred on February 2, 1999, a heavy workday. Appellant also submitted occupational therapy notes dated February 24 and March 10, 1999. Finally, appellant submitted a medical report by Dr. John Aaron who he noted that the first treatment of the injury of February 4, 1999 occurred on February 22, 1999.

In a decision dated April 14, 1999, the Office denied appellant's claim, finding that appellant had not met the requirements for establishing that he sustained an injury as alleged.

To determine whether an 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.[1] Second, the employee must

[1] *See John J. Carlone*, 41 ECAB 354 (1989).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[2] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.

The Office cannot accept the 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.[3] Nor can the 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.[4]

In the present case, appellant filed a claim for benefits alleging that he was injured on February 4, 1999. When the employing establishment stated that he could not have been injured then as he was not working on that date, appellant replied that he must have been injured on February 2, 1999. There is no documentation at all supporting appellant's claim. He did not submit statements from witnesses, nor did he submit a personal statement. The only other evidence in the file are some notes from an occupational therapist, which were not dated until February 24, 1999, approximately three weeks after the alleged injury. Furthermore, the occupational therapy reports list the date of injury as February 4, 1999, the date that the employing establishment alleges, and has supported with time records, that appellant was not working. Due to the discrepancies in this case and the lack of supporting documentation, appellant has failed to establish fact of injury.

[2] *Id.* For a definition of injury, see 20 C.F.R. § 10.5(a)(14).

[3] *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *See Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995); *Joseph H. Surgener*, 42 ECAB 541 , 547 (1991).

The decision of the Office of Workers' Compensation Programs dated April 14, 1999 is affirmed.

Dated, Washington, DC
November 3, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member