U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CHARLES D. WARD and U.S. POSTAL SERVICE,
POST OFFICE, Birmingham, AL

Docket No. 99-1102; Submitted on the Record;
Issued January 19, 2001

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a lower back injury in the performance of duty on November 26, 1996.

Appellant, a 49-year-old city mail carrier, filed a claim for benefits on May 23, 1997, alleging that he injured his lower back on November 26, 1996 when he slipped on some wet leaves and fell while closing the door of his postal vehicle. In support of his claim, he submitted emergency room notes dated November 29, 1996 which indicated that he injured his lower back when he was struck "on a truck a couple [of] days ago." Appellant also submitted unsigned treatment notes dated December 2, 1996 which stated that he was complaining of back pain in the "sacro" area that began after he bumped this area on a doorknob while at work. Further, appellant had x-rays of his lumbar spine taken on December 1, 1996.

Appellant submitted a May 13, 1997 report from Dr. Henry Ruiz, a Board-certified neurosurgeon, who stated that appellant underwent a magnetic resonance imaging (MRI) scan on December 2, 1996, which revealed a collapse and degeneration of the disc with a centrally protruding fragment compromising both S1 roots, and a compression of the left L5 root at the expense of hypertrophy of the facets with foraminal stenosis and a partially herniated disc on that side.

By letter dated July 25, 1997, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical evidence in support of his claim.

Appellant submitted an August 5, 1997 report from Dr. Ruiz, who stated:

> "Basically, [appellant] needs an operation as described in my office note of [May 13, 1997]. Until then, it is my opinion that he should not be doing any kind of work activity; particularly no bending, stooping, lifting or straining. He has a very sympathetic L5 disc herniation with S1 radiculopathies bilaterally and a left

L5 radiculopathy secondary to hypertrophy of the facets creating foraminal stenosis as mentioned in the same note."

Dr. Ruiz further stated that, in the event the Office determined that appellant was able to return to light-duty work, he should undergo a functional capacity evaluation to properly evaluate his restrictions and limitations.

By decision dated August 25, 1997, the Office denied appellant's claim on the grounds that it had received insufficient and conflicting evidence regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged.

By letter dated September 22, 1997, appellant requested an oral hearing, which was held on April 23, 1998. In a report dated October 10, 1997, Dr. Ruiz stated:

"[Appellant] underwent a lumbar interbody fusion at L5 on September 23, 1997. He is expected to be out of work at least for 3 to 4 months after the time of the surgery. Restrictions and limitations concerning his activities will be determined at the time of maximal medical improvement which is expected to occur at 5 to 6 months after surgery."

By decision dated June 18, 1998, an Office hearing representative affirmed the August 25, 1997 decision.

By letter dated August 7, 1998, appellant requested reconsideration. In support of his request, he submitted two statements from a coworker and a union steward, which indicated that appellant informed them in November 1996 that he sustained an accident at work. The coworker stated that he remembered when appellant told him in November 1996 that he injured his back at work and claimed that he noticed appellant acted differently, as if he was in pain since the accident. The union steward stated that, at the time of his accident, he advised appellant to complete an accident report and visit his doctor. Appellant also submitted a May 19, 1998 report from Dr. Ruiz, who essentially reiterated his earlier findings and conclusions and advised that his ability to perform even light forms of activity would be limited for at least the next twelve months.

By decision dated January 19, 1999, the Office denied reconsideration, finding that appellant did not submit evidence sufficient to warrant modification of the June 18, 1998 decision.

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

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing that 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

[1] 5 U.S.C. §§ 8101-8193.

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]

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.[4] 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.[5]

The Board finds that appellant experienced the employment incident at the time, place and in the manner alleged on November 26, 1996. Appellant alleged in his CA-1 form that he injured his lower back when he slipped on some wet leaves and fell while closing the door of his truck. Appellant also submitted the November 29, 1996 emergency room notes stating that he injured his lower back when he struck a truck several days prior, and the unsigned December 2, 1996 treatment notes stating that he was complaining of back pain in the "sacro" area that began after bumping this area on a doorknob at work. Although these descriptions of the alleged November 26, 1996 work incident differ slightly from the account appellant provided in his CA-1 form, they are not so contradictory as to discredit appellant's initial description of the injury. In addition, appellant testified at the hearing that the accident occurred when he slipped on some wet leaves, after which the weight of the heavy mailbag he was carrying caused him to fall backwards against the jeep door handle. Appellant also submitted statements from a coworker and his union steward which indicated that he informed them in November 1996 that he sustained an accident at work, and that he appeared to be in pain at that time.

Additionally, Dr. Ruiz's May 13, 1997 report indicates that appellant was referred to him for an MRI scan by his treating physician after complaining of back pain stemming from a November 26, 1996 work accident, and underwent the MRI scan on December 2, 1996, just a few days after the alleged incident. The results of the MRI revealed an abnormal lumbar spine reading at the lower two levels, especially L5-S1 showing degenerative changes with disc protrusion and extrusion at that level with bilateral neuroforaminal encroachment. Appellant also had x-rays of his lumbar spine taken on December 1, 1996. Taken together, appellant's evidence, which is unrefuted, is sufficient to establish the incident occurred at the time, place and in the manner alleged. While the medical evidence appellant submitted is not sufficient to establish that the employment incident caused a personal injury, the August 5 and October 21, 1997 and May 19, 1998 reports from Dr. Ruiz suggest that appellant sustained at least some level of disability attributable to the employment incident.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

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

Accordingly, the Office should further develop the medical evidence by requesting that the case be referred to an appropriate physician to submit a rationalized medical opinion on whether appellant has sustained any injury or disability attributable to the November 26, 1996 employment injury. Therefore, the Office decision of January 19, 1999 is set aside and remanded for the Office to determine the duration and extent of appellant's back strain, residuals, and the date the disability, if any, ceased. The Office may also consider, on remand, the extent to which appellant is entitled to reimbursement for medical treatment related to his work-related injury. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The January 19, 1999 decision of the Office of Workers' Compensation Programs is hereby set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
January 19, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member