

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JUDY M. TAYLOR and U.S. POSTAL SERVICE,  
SUMMERALL STATION, Aiken, SC

*Docket No. 00-2756; Submitted on the Record;  
Issued July 6, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
BRADLEY T. KNOTT

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On August 28, 1995 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim assigned number 06-0633040 alleging that on March 28, 1995 she sustained a back injury while in the performance of duty.<sup>1</sup> She stopped work on August 28, 1995.

By letter dated September 29, 1995, the Office advised appellant to submit factual and medical evidence supportive of her claim.

By decision dated October 17, 1995, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty. In a letter dated October 26, 1995, appellant requested an oral hearing.

In an October 10, 1996 decision, the hearing representative affirmed the Office's decision.

By decisions dated September 17, 1997, October 14, 1998 and August 10, 2000, the Office denied appellant's subsequent requests for modification based on a merit review of the claim.

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<sup>1</sup> Prior to the instant claim, appellant filed a claim assigned number 06-0506341 alleging that she sustained a back injury on November 23, 1990. The Office of Workers' Compensation Programs accepted appellant's claim for a lumbar strain. Subsequently, appellant filed a claim assigned number 06-0525035 alleging that she sustained a back injury on September 3, 1991. The Office accepted appellant's claim for back strain. On June 13, 1995 appellant filed a claim alleging that she sustained a recurrence of disability of her November 1990 and September 1991 employment injuries on March 28, 1995. By letter dated August 17, 1995, the Office advised appellant that, based on a review of the evidence of record, she had sustained a new injury on March 28, 1995. The Office further advised appellant to file a traumatic injury claim. An internal Office memorandum indicates that the instant claim was combined with appellant's other claims.

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

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

Regarding the first component, the Office found that the lack of contemporaneous medical evidence raised sufficient doubt to find that appellant had not established that the injury occurred in the performance of duty, as alleged. The Board, however, finds that appellant presented sufficient evidence to establish that the incident occurred in the time, place and in the manner alleged.<sup>7</sup> In a narrative statement, appellant explained that on March 28, 1995 she twisted her back when she tumbled while carrying a parcel, that she thought weighed no more than 20 pounds, into an office of an apartment complex on her route and that she could feel the pain go across her back and then down her left leg. Appellant further explained that she could not obtain an appointment with Dr. John Williams, a Board-certified neurosurgeon and her treating physician, until March 31, 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

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</sup> 20 C.F.R. § 10.110(a); *see John M. Tornello*, 35 ECAB 234 (1983).

<sup>7</sup> *Louise F. Garnett*, 47 ECAB 639, 643-44 (1996).

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.<sup>8</sup>

In this case, although there was delayed notification by appellant, as argued by the employing establishment, because she did not report the injury at the time it occurred,<sup>9</sup> the record contains evidence establishing that appellant received medical treatment contemporaneous to the date of her alleged injury. Dr. Williams stated in a June 2, 1995 report that appellant was seen in his office on March 31, 1995 with severe low back and left leg pain. In his February 26, 1996 report, he noted appellant's complaints of low back, left hip and leg pain, and some right leg pain. Dr. Williams also noted that appellant had been unable to work since March 29, 1995. He then noted that appellant stated that "she lifted a box weighing less than 20 pounds and strained her back again." Dr. Williams' April 9, 1997 report indicated that appellant came to his office on March 31, 1995, he reiterated her complaints, her inability to work since March 28, 1995 and a description of the March 28, 1995 incident. A November 6, 1995 medical report of Dr. Franklin M. Epstein, a Board-certified neurosurgeon, provided a history of appellant's employment injuries, which included a description of the alleged March 28, 1995 injury. Dr. Epstein stated:

"On March 28, 1995 [appellant] was carrying a 20-pound object when she slipped or tripped. She wrenched her back and twisted the left ankle. Since then she has had considerable back pain. More notably, however, she has developed severe burning pain in the left foot associated with swelling and perspiration changes, as well as intermittent mottling and color changes of the left foot."

The July 16, 1998 report of Dr. Allen L. Sloan, a Board-certified anesthesiologist, provided a description of appellant's March 28, 1995 injury indicating that "[o]n March 28, 1995 she was delivering a package (US Mail) that weighed approximately 20 pounds. While carrying it to the office of the apartment complex the weight shifted to the left and she stumbled, as she was walking on uneven ground." Dr. Sloan's October 7, 1999 note provided that "historically [appellant] was on work restriction from prior injury on March 28, 1995 when she incurred a consequential injury of her left leg."

Although appellant's claim was filed more than six months after the March 28, 1995 incident, the Board finds that appellant's statement and the medical evidence of record provide a consistent history of injury and that appellant initially received medical treatment a short time after the injury occurred. The Board further finds that, under the circumstances, appellant's

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<sup>8</sup> *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

<sup>9</sup> The Board notes that, although the filing of appellant's claim may have been delayed by the Office's determination that she should file a traumatic injury claim form because she had sustained a new injury rather than a recurrence claim form, appellant did not file her recurrence claim until June 13, 1995, almost three months from the date of her alleged injury.

allegation has not been refuted by strong or persuasive evidence, and thus, the evidence of record supports that the incident occurred at the time, place and in the manner alleged.

Regarding the second component, the Board finds that the record contains medical evidence indicating that appellant's back and left leg conditions were caused by the March 28, 1995 employment incident. Dr. Sloan's July 16, 1998 report revealed a history of the March 28, 1995 employment incident and medical treatment. Dr. Sloan stated:

"According to Dr. Epstein's notes from March 20, 1998, [appellant] has REFLEX SYMPATHETIC DYSTROPHY in the left lower extremity. She did have a LUMBAR SYMPATHECTOMY with partial, but incomplete benefit. She remains disabled with pain and since it has been several years she is not apt to be able to do any work, including sedentary jobs.

"Although we still do not completely understand RSD, we do know that not all people are equally susceptible to its development. In this condition, relatively minor bruising or straining activities set up an alteration in the control mechanism of inappropriate pain sensation. In her case, her multiple injuries have caused her sympathetic nervous system to begin carrying abnormal information to and from the brain. The result of the chronic disability is intractable recalcitrant pain and loss of limb function.

"It is also my opinion that she suffers from CHRONIC REFLEX SYMPATHETIC DYSTROPHY.... The injury she sustained on March 28, 1995 has obviously aggravated the injury she received September 1991. She states the location in the back and left leg is the same, only more intense."

Proceedings under the Federal Employees' Compensation Act are not adversarial in nature, nor is the Office a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.<sup>10</sup> Although Dr. Sloan's report does not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her back and left leg conditions were caused by the March 28, 1995 employment incident and he is not a specialist in the appropriate field of medicine, it raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>11</sup> Additionally, the Board notes that in this case the record contains no medical opinion contrary to appellant's position. The Board will remand the case for further development of the medical evidence.

On remand, the Office should refer appellant, the case record and a statement of accepted facts to an appropriate medical specialist for an evaluation and a rationalized medical opinion on whether appellant's back and left leg conditions were caused by the March 28, 1995 employment

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<sup>10</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>11</sup> *See John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

incident. After such development of the case record as the Office deems necessary, a *de novo* decision shall be issued.

The August 10, 2000 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part, and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC  
July 6, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member