

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JUAN VEGA and U.S. POSTAL SERVICE,
POST OFFICE, San Francisco, CA

*Docket No. 00-2119; Submitted on the Record;
Issued October 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty.

On July 18, 1999, appellant, then a 46-year-old mail handler, filed a notice of traumatic injury alleging that on July 8, 1999 a coworker assaulted him and hurt his neck, shoulders, arm and low back. Appellant stopped work on the same day.

Accompanying the claim was medical evidence dated July 20, 1999 from Dr. John A. Dana who stated that “[Appellant] should be off work until August 10, [1999] due to new injury to neck and upper back.”

By letter dated August 2, 1999, the Office of Workers' Compensation Programs requested detailed factual and medical information from appellant.

By letter dated August 6, 1999, a human resources specialist with the employing establishment controverted appellant's claim, stating that the employees were engaging in physical horseplay, which was not allowed and were sent home and placed on administrative leave.

In a decision dated September 20, 1999, the Office denied appellant's claim for failure to establish fact of injury. The Office found that there were inconsistencies and discrepancies regarding whether the claimed incident occurred at the time, place and in the manner alleged. The Office also found that the medical evidence failed to demonstrate that appellant sustained an injury as alleged, or that an injury was causally related to any employment factors.

By letter dated September 22, 1999, appellant requested an oral hearing, which was held on March 1, 2000.

By decision dated May 9, 2000, the hearing representative found that, because of inconsistencies regarding whether the alleged incident occurred at the time, place and in the

manner alleged, fact of injury was not established. He also found that the medical evidence failed to support that appellant sustained an injury causally related to his employment factors.

The Board finds that appellant has failed to establish that he sustained an injury while in the performance of duty.

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 filed within the applicable time limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty,⁴ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

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.⁷

In this case, appellant has consistently maintained that on July 8, 1999 he was physically assaulted by a coworker. Appellant immediately reported the incident to his supervisor and shortly after the alleged incident a postal inspector and police officer observed redness on appellant's neck. Consequently, the Board finds that appellant has established that the incident occurred on July 8, 1999.

The second component of fact of jury 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.⁸

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

⁶ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *Elaine Pendleton*, *supra* note 2.

⁸ *Kathryn Haggerty*, 45 ECAB 383 (1994). See 20 C.F.R. § 10.110(a).

In this case, there is no contemporaneous medical opinion evidence supporting that the July 8, 1999 employment incident resulted in a personal injury. On his July 20, 1999 medical certificate Dr. Dana stated that appellant should be out work until August 10, 1999 due to a new injury to his neck and back. The certificate did not include a history of injury, a diagnosis or address a causal relationship between a diagnosed condition and the July 8, 1999 employment incident. The medical certificate is insufficient to establish appellant's claim. Dr. Dana's July 20, 1999 follow-up progress notes included a history of injury, but failed to provide a diagnosed condition causally related to the July 8, 1999 employment incident. The progress notes are, therefore, insufficient to establish appellant's claim.

On a July 20, 1999 duty status report, Dr. Dana diagnosed cervical strain along with degenerative disc disease of the cervical spine. He failed to explain how, if at all, the July 8, 1999 employment incident affected appellant's preexisting degenerative disc disease of the cervical spine or to relate a cervical strain to the incident considering the incident occurred 12 days before he examined appellant. On a July 20, 1999 attending physician's report, Dr. Dana stated that he first saw appellant on July 20, 1999. Dr. Dana diagnosed cervical strain and degenerative disc disease and checked "yes" to the question that he believed that the diagnosed condition was caused or aggravated by the employment incident. As on the duty status report, Dr. Dana failed to provide any rationale to support his opinion.⁹

Appellant submitted a January 10, 1999 prescription from Dr. Hicks. Appellant stated that he saw Dr. Hicks on July 10, 1999 and was referred to Dr. Dana. On August 25, 1999 the Office advised appellant to submit a report from Dr. Hicks, but no such report was received.

On an August 10, 1999 attending physician's report, Dr. Dana diagnosed degenerative disc disease and checked "yes" that he believed the condition was caused or aggravated by the July 8, 1999 employment incident, but failed to provide any supporting rationale. The attending physician's report is insufficient to establish appellant's claim.

In an August 26, 1999 progress report, Dr. Dana diagnosed degenerative disc disease, but failed to address a causal relationship between the condition and the July 8, 1999 employment incident. As well, in an August 10, 1999 progress report, he diagnosed degenerative disc disease but failed to address a causal relationship between the condition and the employment incident. The progress reports are insufficient to establish appellant's claim. Also, on a September 9, 1999 duty status report, Dr. Dana diagnosed degenerative disc disease and again did not address a causal relationship between the condition and the July 8, 1999 employment incident.

None of the medical evidence submitted provided a medical opinion with supporting rationale, causally relating a diagnosed condition to the July 8, 1999 employment incident.¹⁰

⁹ *Ruth S. Johnson*, 46 ECAB 237 (1994). (The Board has held that when a physician's opinion on causal relationship consists only of checking "yes" to a form question, that opinion has little probative value and is insufficient to establish causal relationship.) Appellant's burden included the necessity of furnishing an affirmative opinion from a physician who supports his conclusion with sound medical reasoning.

¹⁰ The Board notes that items 152-53 do not belong to the appellant in this case.

By letter dated August 2, 1999, the Office advised appellant of the type of medical evidence needed to support his claim, but appellant failed to provide such medical evidence. The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a injury causally related to the July 8, 1999 employment incident.

The May 9, 2000 and September 20, 1999 decisions of the Office of Workers' Compensation Programs are affirmed as modified.

Dated, Washington, DC
October 9, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Priscilla Anne Schwab
Alternate Member