

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROSEANNE M. DOUGHERTY and U.S. POSTAL SERVICE,
ROXANNE H. JONES STATION, Philadelphia, PA

*Docket No. 01-184; Submitted on the Record;
Issued October 11, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on July 25, 2000.

On July 25, 2000 appellant, then a 42-year-old mail carrier, filed a claim asserting that she pulled a muscle in her right leg that day while coming down the steps from the second floor at work.

An employing establishment accident report indicated that appellant felt pain in the calf of her right leg while walking down the stairs leading to the swing room. A work status summary from the employing establishment's contract medical facility reported the history of injury as "stepping down step." A physician's assistant reported on July 25, 2000 as follows: "Above was seen for follow up today for a work injury. She states [that] she was stepping down on a step and felt a sharp pain, a pop, and felt and heard a pop in her right calf. She had pain in her right calf since that time. This happened approximately 9 a.m. today."

Appellant's supervisor reported that at 8:45 a.m. on July 25, 2000 appellant came into his office complaining that her leg was hurting after coming down the steps from a training class held in the station swing room. Appellant claimed that she felt a pop in her right calf as she stepped from the last step. She did not trip, fall or stumble.

Emergency room records on the date of injury reflect the following history: "I pulled something in the back of my right calf at work." A specialist in emergency medicine diagnosed right calf muscle strain and indicated that this medical condition was due to the incident reported: "walking down stairs and felt pain in right leg (calf)."

Appellant's attending orthopedic surgeon reported on July 27, 2000 as follows: "Felt something pull right calf two days ago as she was stepping off a step. Immediate pain and disability. She was seen in the emergency room." The doctor diagnosed tear of the medial head of the right gastrocnemius.

On August 7, 2000 the Office of Workers' Compensation Programs requested that appellant submit additional information regarding the circumstances of the reported injury.

Dr. Norman B. Stempler, a Board-certified orthopedic surgeon, examined appellant on August 18, 2000. After noting that appellant was a letter carrier and had been out of work since the end of July, Dr. Stempler reported the following history of injury: "She stated that, while working, she stepped off a stoop and heard a loud snap in her right calf with sudden onset of severe pain." He diagnosed healing partial tear of the right gastrocnemius muscle. Dr. Stempler then commented: "[Appellant] related that she stepped off a curb on July 25, 2000 and had a sudden, severe and sharp pain with immediate swelling in her right calf." He reported that objective findings substantiated appellant's subjective complaints, that appellant was capable of full-time sedentary work activities and that he expected appellant would heal uneventfully over the next four to six weeks.

On September 8, 2000 the Office received appellant's response to the request for additional factual information. She described how the injury occurred: "After stepping off step -- I heard a 'pop' and felt a sharp tearing pain in right calf." She noted that her supervisor was around at the time and had immediate knowledge of the injury.

On September 8, 2000 the Office also received a form dated July 27, 2000 on which appellant described the injury: "Stepping off step -- felt 'rip' and heard a pop."

In a decision dated September 8, 2000, the Office denied compensation. The Office found that, although appellant had provided sound medical documentation, she failed to provide a narrative statement of the details of the alleged incident on July 25, 2000. The Office noted that appellant's claim form failed to answer such questions as how she got hurt, what exactly her flight down the stairs entailed and what the immediate effects of the injury were. The Office further noted that three different medical reports had listed her injury as occurring when she stepped off a stoop, stepped off a curb and stepped down a step.

The Board finds that appellant sustained an injury while in the performance of duty on July 25, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.²

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

¹ 5 U.S.C. §§ 8101-8193.

² See generally *John J. Carlone*, 41 ECAB 354 (1989); *Abe E. Scott*, 45 ECAB 164 (1993); see also 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15)-.5(a)(16) ("traumatic injury" and "occupational disease or illness" defined).

circumstances and her 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.³ However, an employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁴

Appellant's claim is consistent with the surrounding facts and circumstances and with her subsequent course of action. After reporting the injury to her supervisor, appellant obtained prompt medical attention. The physician who examined her on the day of injury reported that her diagnosed right calf muscle strain was due to walking down stairs. Appellant filed a claim for compensation that same day and thereafter continued to seek medical attention. Her attending physician saw her two days later and diagnosed a tear, medial head, right gastrocnemius.

Appellant's account of events, together with the history reported by appellant's supervisor and in various medical reports, is sufficiently detailed to describe what occurred on July 25, 2000. She consistently related that she hurt her right calf upon walking down the stairs at work on the morning of July 25, 2000. Appellant was coming down the steps from a training class held in the station swing room. She felt a pop in her right calf as she stepped from the last step, which caused immediate pain. Appellant did not trip, fall or stumble.

The only inconsistent evidence was Dr. Stempler's August 22, 2000 report that appellant stepped off a "stoop" while working. Later in his report he noted that appellant had stepped off a "curb" on July 25, 2000. Given the inconsistency in his own reporting of the history, the Board finds that Dr. Stempler's report does not cast sufficient doubt on appellant's statements and cannot be considered such strong and persuasive evidence that it refutes the otherwise consistent history reported throughout the record in this case.

The evidence establishes that appellant experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. The question for determination is whether this event, incident or exposure caused an injury.

The Board finds that the evidence is sufficient to establish such an injury. The evidence, as noted, supports that appellant injured her right calf while walking down stairs at work on July 25, 2000. Appellant reported the injury promptly, sought medical attention and filed a claim. Physicians made positive findings, diagnosed a strain or tear of the right calf muscle and provided treatment. Objective findings substantiated appellant's subjective complaints. The July 25, 2000 report of the emergency room physician directly supported a causal relationship between appellant's diagnosed condition and the established history of injury.

³ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).

⁴ *Virgil F. Clark*, 40 ECAB 575 (1989); *Robert A. Gregory*, 40 ECAB 478 (1989).

In this case, the facts are well established and the mechanism of injury is simple and well understood. The condition diagnosed, a muscle strain or tear, is common and uncomplicated. The record contains a contemporaneous medical opinion directly relating appellant's condition to the incident that occurred on July 25, 2000, and there is no medical opinion to the contrary. The Board finds that the evidence in this case is sufficient to establish that the incident of July 25, 2000 caused a tear of the medial head of the right gastrocnemius. Appellant has met her burden of proof to establish fact of injury.

The Board will remand this case for appropriate findings on the extent of disability causally related to the July 25, 2000 employment injury.

The September 8, 2000 decision of the Office of Workers' Compensation Programs is reversed and the case remanded for further action consistent with this opinion.

Dated, Washington, DC
October 11, 2001

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member