

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ANN D. CRISPIN and U.S. POSTAL SERVICE,
POST OFFICE, Monroeville, NJ

*Docket No. 01-539; Submitted on the Record;
Issued October 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on December 15, 1998.

On April 30, 1999 appellant, then a 29-year-old rural letter carrier, filed a notice of traumatic injury alleging that she suffered from a herniated disc in the neck as a result of moving a heavy parcel of mail in the performance of duty on December 15, 1998.¹ Appellant's supervisor completed the reverse side of the CA-1 claim form, noting that he had not been informed of the alleged work injury until May 20, 1999. Appellant stopped working on April 6, 1999 and has not returned to work.

A magnetic resonance imaging (MRI) scan performed on February 18, 1999 revealed mild to moderate multilevel degenerative change, predominantly at C6-7 and resulting in some borderline spinal stenosis and foraminal encroachment. A focal right lateral herniation of the C6-7 disc was noted and a mild disc bulge at C4-5.²

In treatment notes dated April 7 and May 17, 1999, Dr. Leonard A. Bruno, a Board-certified neurosurgeon, advised that appellant was disabled from work and under his care for cervical herniated disc and radiculitis.

In an April 8, 1999 report, Dr. Bruno noted that, "following the Christmas season of December of 1998, after handling large volumes of mail, [appellant] developed numbness, in the forearms and hands, which was diagnosed by her family physician as tendinitis. He reported that appellant presented to him complaining of neck pain radiating into both shoulders with variable

¹ Appellant specifically described the work incident as follows, "Getting parcel off back seat -- heavy parcel shifted and pinned my left arm. Used right arm to move heavy parcel. When I pulled I felt severe burning pain in neck. Thought it was a pulled muscle."

² Nerve conduction studies performed on February 9, 1999 were normal.

severity. Dr. Bruno noted that appellant's numbness in the hands and forearms had resolved but that appellant noticed weakness in the left arm and hand, often causing her to drop things. He diagnosed cervical radiculopathy resulting from a C6-7 disc herniation. Dr. Bruno prescribed physical therapy, medication and a course of epidural steroid injections.

In a May 31, 1999 statement, appellant stated that when she pinned her left arm with the heavy parcel on December 15, 1998 she initially thought she had just pulled a muscle. She stated that over the course of the next few weeks she began to have pain in the hands and fingers and assumed it was carpal tunnel syndrome and not related to the December 15, 1998 work incident. She alleges that she saw her family physician on January 29, 1999 and that he scheduled her for a battery of tests including an MRI scan on February 18, 1999, at which time she learned that she had a herniated cervical disc. Appellant states that she was unable to get an appointment with a neurosurgeon, Dr. Bruno, until April 6, 1999 and that he told her to stop work. Appellant then related that she got Forms CA-1 and CA-2 the following week and was uncertain which one to fill out for her disc herniation. She alleges that she was told by her supervisor that she had to decide whether her injury was traumatic or not. Appellant relates that she had an appointment with Dr. Bruno on May 17, 1999 and he said it was traumatic beginning with the December 15, 1998 work incident.

In a July 9, 1999 letter, the Office of Workers' Compensation Programs advised appellant of the factual and medical evidence required to establish her claim.

In a decision dated October 22, 1999, the Office denied compensation on the grounds that appellant failed to establish fact of injury. The Office specifically determined that the evidence was insufficient to show that the incident claimed occurred at the time, place and in the manner alleged by appellant on her CA-1 claim form.

Appellant by counsel requested reconsideration on July 20, 2000.

In conjunction with her reconsideration request, appellant submitted a July 7, 2000 report from Dr. Bruno. He related that when he first saw appellant on April 6, 1999 she complained of neck pain radiating into both shoulders, pain in the left forearm and weakness in the left arm and hand that caused her to drop objects. Dr. Bruno reported that, based on his review of appellant's MRI scan and physical findings, it was Dr. Bruno's opinion that appellant had underlying degenerative cervical disc disease and a disc herniation at C6-7. He attributed the disc herniation to a "work injury" that "occurred in December 1998" when appellant was handling large volumes of mail. With respect to a May 17, 1999 evaluation, Dr. Bruno noted that appellant had slightly improved following treatment with steroids and physical therapy. He next stated that he saw appellant on June 14, 1999 at which time she was complaining of a burning sensation in the right side of her neck and her occipital scalp area. Dr. Bruno stated that appellant had reached maximum medical improvement on July 14, 1999 and could return to light to medium work on a permanent basis.

In an addendum report dated July 26, 2000, Dr. Bruno stated, "It is my opinion within a reasonable degree of medical certainty that [appellant's] condition is directly related to her work accident on December 15, 1998. She reported to me that on that date she was getting a parcel off the back seat of her vehicle when the parcel shifted in her left arm."

In a September 14, 2000 decision, the Office refused modification of its prior decision.

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

An employee seeking benefits under the Federal Employees' Compensation Act³ 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 limitation 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.⁴ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

In the instant case, appellant filed a claim for a traumatic injury alleging that she sustained a herniated cervical disc as the result of a lifting incident on December 15, 1998. The primary difference between a traumatic injury and an occupational disease is that a traumatic injury must occur within a single work shift while an occupational disease occurs over more than one work shift.⁶

In order to determine whether an employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether a "fact of injury" has been established. There are two components involved in establishing fact of injury that must be considered. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused personal injury.⁸

The Office in the present case determined that appellant failed to submit sufficient evidence to establish that she experienced the employment incident in the time, place and manner alleged. The Office noted that several medical treatment notes from appellant's treating physician, Dr. Bruno, indicated that appellant had been lifting heavy parcels in "December 1998" but that he had not specifically addressed the details of the lifting incident on December 15, 1998. Appellant explained that, since her symptoms developed over time, it was not obvious to her that the December 15, 1998 lifting incident had been the exact cause of her herniated cervical disc, although she clearly attributed her condition to work factors such as lifting heavy parcels.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton* 40 ECAB 1143 (1989).

⁵ *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See* 20 C.F.R. § 10.5(a)(14-16); 20 C.F.R. § 10.20.

⁷ *Elaine Pendleton*, *supra* note 4.

⁸ *Id.*

After describing the details of the December 15, 1998 lifting incident to Dr. Bruno, he advised appellant that it was a sufficient traumatic injury to have caused her cervical problems.

The Board has consistently held that a claimant's statement regarding an incident is given great weight,⁹ particularly in the absence of probative evidence refuting that the incident occurred at the time, place and in the manner alleged. Because appellant's contention that she was injured on December 15, 1998 is not refuted in the record and the chronology of her medical treatment is consistent with her personal statement that she did not initially suspect that a serious injury had occurred on December 15, 1998 with respect to the lifting incident, the Board finds that appellant has established an employment incident on December 15, 1998.

The Office did not address the medical evidence. On remand the Office must determine whether appellant's herniated cervical disc is causally related to the December 15, 1998 work incident. Thereafter, the Office must then issue a *de novo* decision.

The September 14, 2000 decision of the Office of Workers' Compensation Programs is hereby vacated and the case is remanded for further consideration consistent with this opinion.

Dated, Washington, DC
October 4, 2001

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

⁹ *Thelma Rogers*, 42 ECAB 866 (1991).