

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JERRY C. GARRETT and U.S. POSTAL SERVICE,  
MAIN POST OFFICE, Winchester, KY

*Docket No. 01-367; Submitted on the Record;  
Issued February 8, 2002*

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DECISION and ORDER

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

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

The Board has duly reviewed the case record in this appeal and finds that the case is not in posture for decision.

On August 2, 1994 appellant, then a 41-year-old mail carrier, filed a traumatic injury claim assigned number A6-639373 alleging on that date he injured his leg and knee when he lost his balance inside the vestibule and fell.<sup>1</sup>

By letter dated December 7, 1995, the Office advised appellant to submit factual and medical evidence supportive of his claim. Appellant did not respond.

By decision dated April 9, 1996, the Office found the evidence of record insufficient to establish that appellant sustained an injury while in the performance of duty. In an undated letter, appellant requested an oral hearing before an Office representative.

In a decision dated January 23, 1997, the hearing representative affirmed the Office's decision. In an April 20, 1997 letter, appellant, through his counsel, requested reconsideration of the Office's decision.

The Office denied appellant's request for modification based on a merit review by decision dated May 14, 1997. In a letter dated May 27, 1998, appellant, through his counsel, requested reconsideration of the Office's decision.

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<sup>1</sup> Prior to the instant claim, appellant filed a traumatic injury claim assigned number 06-0602215 alleging that he injured both knees on July 22, 1994 when he fell on a sidewalk. By letter dated November 18, 1994, the Office of Workers' Compensation Programs accepted appellant's claim for a strain of both knees.

By decision dated June 2, 1998, the Office denied appellant's request for reconsideration as untimely filed and failed to establish clear evidence of error. In an August 26, 1998 letter, appellant appealed the Office's decision to the Board.

In a May 15, 2000 decision, the Board found that appellant's request for reconsideration was timely filed based on the "mailbox rule." Accordingly, the Board set aside the Office's decision and remanded the case to the Office to determine whether appellant was entitled to a merit review of his claim.

On remand, the Office denied appellant's request for modification based on a merit review of the claim in a September 7, 2000 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, appellant stated in his traumatic injury claim that on August 2, 1994 he lost his balance inside the vestibule and fell injuring his leg and knee. 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 his subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work

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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).

without apparent difficulty following the alleged injury and failure to obtain medical treatment, may cast sufficient doubt on an employee's statements in determining whether he 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>7</sup>

On the reverse of appellant's claim form, Gary Wills, appellant's supervisor, indicated that the date of injury as August 2, 1994. Mr. Wills stated that appellant reported that his knees gave out and he fell to the floor on his backside. He further stated that appellant was offered medical treatment, but that appellant stated he was fine and refused the treatment. Medical records indicated a history of appellant's alleged injury on August 2, 1994. The Board finds that appellant's and Mr. Wills' statements and medical evidence provide a consistent history of injury. The Board further finds that, under the circumstances, appellant's allegation has not been refuted by strong or persuasive evidence. The Board, therefore, finds that the evidence of record supports that the incident occurred at the time, place and in the manner alleged.

Regarding the second component, appellant submitted an October 2, 1997 report of Dr. David Pursley, a Board-certified neurologist and appellant's treating physician, indicating an extensive review of his medical records. Dr. Pursley stated that appellant had preexisting degenerative disease of the spine prior to the 1994 work incidents. He concluded that appellant's "preexisting degenerative disease of the spine was made catastrophically worse by the two falls at work on July 22 and August 2, 1994." Dr. Pursley opined that appellant's fall on his knees "more likely" exacerbated his thoracic disc disease. Dr. Pursley's opinion regarding the cause of appellant's back condition is not well rationalized and thus, it is of limited probative value.<sup>8</sup>

However, proceedings under the 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>9</sup> Although Dr. Pursley'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 appellant's back condition was caused by the August 2, 1994 employment incident, it raises an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>10</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 condition was caused by the August 2, 1994 employment incident.

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<sup>7</sup> *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

<sup>8</sup> See *Jennifer Beville*, 33 ECAB 1970 (1982); *Leonard J. O'Keefe*, 14 ECAB 42 (1962).

<sup>9</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>10</sup> See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

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

The September 7, 2000 decision of the Office of Workers' Compensation Programs is hereby set aside and the case is remanded for further consideration consistent with this decision.

Dated, Washington, DC  
February 8, 2002

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member