

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONG I. YOUN and U.S. POSTAL SERVICE,
POST OFFICE, Newark, NJ

*Docket No. 01-1379 Submitted on the Record;
Issued January 24, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof to establish that she sustained an injury in the performance of duty on December 13, 2000.

On January 25, 2001 appellant, a 39-year-old mail processor, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1). She alleged that on December 13, 2000 she sustained an injury to her low back, left arm and shoulders when she moved a tray. Appellant stopped work on January 18, 2001 and returned on January 29, 2001.

On January 25, 2001 the employing establishment controverted the claim.

In support of her claim, appellant submitted documentation regarding indefinite light duty, from a physician whose signature is illegible. Her light-duty restrictions were: No lifting over nine pounds; no pushing or pulling; no prolonged sitting; and standing not to exceed two hours a day.

In a report dated January 19, 2000, Dr. Hai Sun Park, a Board-certified internist, indicated that appellant was suffering from severe recurrent myofibrositis with swelling of her extremities. He advised that appellant return to work in a light-duty capacity only.

In letters dated February 12, 2001, the Office of Workers' Compensation Programs requested that appellant submit additional information. The Office also requested medical documentation explaining how the reported work incident caused or aggravated the claimed injury. Appellant was allotted 30 days to submit the requested evidence.

A January 27, 2001 clinical laboratory report supplied by appellant contained findings regarding blood tests.

In a February 1, 2001 magnetic resonance imaging of the cervical spine, Dr. Howard Kessler, Board-certified in nuclear medicine and diagnostic radiology, found disc herniation at C5-6, central to right paracentral with mild thecal sac indentation.

In a March 8, 2001 summary of electromyogram (EMG) and nerve conduction velocity findings, Dr. Chee Gap Kim, Board-certified in physical medicine and rehabilitation, stated that appellant's sensory and motor nerve conduction studies were within normal limits. The H reflexes were within normal limits bilaterally and EMG studies showed findings as the accompanied table. He concluded by stating that the above findings were compatible with bilateral L5 radiculopathy.

In a March 9, 2001 report, Dr. Park, advised that appellant was seen on December 19, 2000 with new findings of swelling of the hands with clinical examination of extremely tender left upper extremities. He noted that symptomatic treatment with anti-inflammatories were prescribed and findings were consistent with cervical and lumbar radiculopathy. Dr. Park opined that appellant had symptoms that were aggravated by her required job-related movement, on top of her previous head and neck injury which she sustained.

In a March 10, 2001 response, appellant indicated that she did not report the injury initially because she did not think it was serious. She noted that she did report the injury "by word of mouth to Ms. Pet, who was supervisor on that night." Appellant stated that her supervisor allowed her to wash up two hours earlier and suggested a visit to the medical unit as soon as possible. She also replied that she felt back pain around her lower waist and asked Ms. Pet to wash up earlier, thinking the pain would subside after relaxation. Appellant did not describe any other injury and stated that her first visit to a physician occurred on December 19, 2000, which was the first available appointment. She described her symptoms as swelling in the left hand/arm muscle, back pain in the lower waist and an inability to stand for extended periods on her own. Appellant stated her treatment consisted of hot pads, back massage and whirlpool and working with light restrictions. In response to the question, "Did you have any similar disability or symptoms before the injury," appellant replied, "none."

In a decision dated March 15, 2001, the Office denied appellant's claim for compensation, as she did not establish the fact of injury.

The Board finds that appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on December 13, 2000.

An employee seeking benefits under the Federal Employees' Compensation Act 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 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 is causally related to the employment injury."¹ These are the essential

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

To determine whether an employee satisfied his or her burden of proof, the Office first considers whether the employment incident occurred at the time, place and in the manner alleged.³ Second, the Office must determine whether there is a causal relationship between the employment incident and the disability and/or condition for which compensation is claimed.⁴ An employee has the burden of establishing the occurrence of the event at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence.⁵ Thus, an employee may satisfy the burden of proof establishing that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition is related to that incident.

In the instant case, appellant has submitted insufficient factual evidence to establish that the alleged December 13, 2000 incident occurred as claimed. In the January 25, 2001 claim form, she stated that when she tried to move the tray to the postal container, she injured her low back, shoulders and arms. Appellant did not identify the specifics of her injury or how she injured herself. She did not describe what kind of tray, how heavy, or how she injured herself. Additionally, appellant did not report the claim for five weeks, continuing to work during that time. She explained that initially, the claim did not seem significant, however, later, it warranted medical attention. Appellant explained that she reported the incident verbally to the supervisor on duty, but no statement was submitted from the supervisor to corroborate her claim. In fact, the employing establishment controverted the claim.

Additionally, Dr. Park stated that he saw appellant on December 19, 2000 with new complaints of swelling of the hands and these findings were consistent with cervical and lumbar radiculopathy. He stated that her symptoms were aggravated by her job-related movement, but did not specify what movement to which he was referring and noted her previous head and neck injuries without specifying any other details. Dr. Park did not refer to a particular injury of December 13, 2000 or indicate an awareness of a specific event.

In her March 10, 2001 statement, appellant indicated that she had no previous injury or symptoms, however, the record reflects that appellant had a previous claim No. 020714714 for an on-the-job injury on March 24, 1996. Her physician, Dr. Park, had seen her at that time for the same symptoms of neck and back pain and weakness of the left upper and lower extremities and right upper arm weakness. Additionally, the record reflects previous head and neck injuries.

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Elaine Pendleton*, *supra* note 1.

⁴ *Calvin E. King*, 51 ECAB ___ (Docket No. 98-922, issued March 24, 2000); *see Elaine Pendleton*, *supra* note 1 at 1147.

⁵ *Sherman Howard*, 51 ECAB __ (Docket No. 98-599, issued March 24, 2000); *Brian H. Derrick*, 51 ECAB __ (Docket No. 98-119, issued March 29, 2000).

In addition, none of the medical reports provided by appellant contained any description of how the injury occurred.

Although appellant was advised in detail of the evidence needed to establish her claim for traumatic injury, she did not submit this information. There is insufficient factual evidence of record to establish that the alleged December 13, 2000 incident occurred at the time, place and in the manner alleged. Appellant has, therefore, failed to meet the first, threshold element of her burden of proof. In view of the inconsistencies in the evidence regarding how appellant sustained her injury, the Board finds that there is insufficient evidence to establish that appellant sustained an injury in the performance of duty as alleged.⁶

For the above-noted reasons, appellant has not established that she sustained an injury in the performance of duty on December 13, 2000.

The decision of the Office of Workers' Compensation Programs dated March 15, 2001 is affirmed.

Dated, Washington, DC
January 24, 2002

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

Priscilla Anne Schwab
Alternate Member

⁶ See *Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in a claimant's statements describing the injury created serious doubt that the injury was sustained in the performance of duty).