

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN P. O'DONNELL and U.S. POSTAL SERVICE,
POST OFFICE, Stokie, IL

*Docket No. 01-34; Submitted on the Record;
Issued March 20, 2002*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant carried his burden of proof in establishing that he sustained an injury in the performance of duty.

On December 9, 1998 appellant, then a 26-year-old mail carrier, filed a notice of traumatic injury alleging that he pulled a muscle when he bent over to pick up a letter at work. The record indicates that appellant was treated at a health care facility for lower back pain on December 9, 1998. He was placed under lifting restrictions but did not miss any time from work.

On July 5, 2000 appellant filed a notice of occupational disease alleging that he frequently experienced soreness in his lower back while carrying mail. He further noted that on July 5, 2000 his back was more sore than usual. He stated, "When I [returned] to the office after completing the route, it became a sharp unbearable pain as I lifted a tub of mail to carry into the office."

In a July 5, 2000 treatment note, Dr. Julio A. Mancera, a Board-certified internist, indicated that appellant was seen for acute low back pain. Dr. Mancera noted that appellant complained about pain and discomfort to the lower lumbar region. He further related that the pain had started when appellant lifted some mail tubs. According to Dr. Mancera, appellant had a history of low back pains, beginning one and one-half years prior when appellant had experienced a similar low back discomfort. X-rays were noted as being normal. Appellant was also reported as having been asymptomatic for the past several weeks. He opined that appellant could return to work with a 10-pound lifting restriction.

In a July 7, 2000 treatment note, Dr. Mancera diagnosed a lumbar strain. The physician advised that appellant could return to work with the following restrictions: no repetitive lifting

over 20 pounds, no bending greater than 6 times per hour, no pushing and/or pulling over 30 pounds of force. Appellant was also referred for physical therapy.¹

In a CA-17 duty status report, Dr. Mancera listed the date of injury as July 5, 2000. He described the injury as “lower back injury sustained lifting a tub.”

In a July 21, 2000 letter, the Office of Workers’ Compensation Programs advised appellant of the factual and medical evidence required to establish his claim. The Office specifically asked appellant to clarify whether his current back condition developed over more than one shift or was the result of a lifting incident on July 5, 2000 as reported by his treating physician.²

In a decision dated September 6, 2000, the Office denied compensation on the grounds that appellant failed to establish fact of injury. The Office specifically noted that appellant failed to respond to the questions posed in the July 21, 2000 letter; therefore, it was not clear whether appellant was claiming an occupational disease or traumatic injury. The Office further noted that “the medical evidence of file does not provide a clear history of injury and a rationalized statement indicating that your employment was responsible for your condition.”

The Board finds that this 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 determining whether a claimant has discharged his or her burden of proof and is entitled to compensation benefits, the Office is required by statute and regulation to make findings of fact and provide a statement of reasons.⁶ The Office’s procedure manual also provides additional requirements for a final decision of the Office that denies an employee’s claim for benefits.⁷ The procedure manual states that a final decision denying a claim must

¹ The record indicates that appellant accepted a limited-duty assignment on July 7, 2000.

² Appellant did not respond to the questions posed by the Office in the July 21, 2000 letter.

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 5 U.S.C. § 8124(a); 20 C.F.R. § 10.130; see *Elaine Pendleton*, *supra* note 4.

⁷ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.2(c) (March 1997).

include findings of fact⁸ and provide “a correct description of the basis for the denial so that the parties of interest will have a clear understanding of the precise defect of the claim and the kind of evidence that would tend to overcome it.”⁹

In this case, appellant filed a CA-2 occupational disease claim alleging lower back pain due to factors of his employment. In support of his claim, appellant submitted a CA-17 duty status report that states that he sustained a lower back injury while lifting a tub on July 5, 2000. Dr. Mancera’s July 5, 2000 report also states that appellant was lifting tubs on that date when he felt acute lower back pain. These medical reports do not support that appellant has a back condition due to factors of his employment as required for an occupational disease claim. 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.¹⁰

Appellant’s CA-2 claim form states that he constantly felt soreness carrying mail but also stated that his pain became unbearable after lifting a tub of mail on July 5, 2000. Although appellant was asked to clarify which if either of these factors caused his back pain, he was unresponsive to the Office’s inquiry. Appellant’s medical evidence suggests that the alleged back strain was due to a traumatic injury that occurred on one day, July 5, 2000.

In denying appellant’s claim, the Office determined that appellant failed to establish fact of injury. The Office, however, did not properly resolve whether appellant was alleging a traumatic injury or an occupational disease claim. The Office’s decision provides the Board with no analysis of why appellant failed to establish fact of injury under either circumstances of a traumatic injury or occupational disease claim. Moreover, the Office appears to have decided to deny this claim because appellant failed to respond to questions posed in the Office’s July 21, 2000 letter. Although appellant did not comply with the Office’s request that he specify the type of claim he was alleging, this is not grounds for a denial of his claim. The Board notes that the Office was still obliged to provide a decision that conforms to the statutory and regulatory requirements outlined above. Until such time as the Office makes an appropriate finding of fact with respect to the type of claim being adjudicated, the Board is unable to render a decision as to whether the evidence of record is sufficient to establish fact of injury.

Because the Office did not adequately set forth the basis for the denial of appellant’s claim, the Board is unable to render an informed decision on appellant’s case. Therefore, the

⁸ The procedure manual states that the finding of fact should include the following: (1) whether a timely claim for compensation was filed; (2) whether the injured person was a civil employee; (3) the date and place of injury or alleged injury; (4) circumstances surrounding the injury or alleged injury; (5) nature and extent of the injury or alleged injury; and (6) any other facts which are necessary to address each substantive allegation made concerning the issue on which the denial is based; *see id.*

⁹ *Supra* note 6. The procedure manual further states as follows: “A finding that claimant failed to meet the burden of proof is properly made from the evidence or lack thereof, and not simply because the claimant failed to respond to correspondence from [the Office].”

¹⁰ *See* 20 C.F.R. § 10.5(q) (1999).

case must be remanded for the Office, as part of its adjudicatory function, to make detailed findings of fact, in conformance with its regulations and Board precedent.

The September 6, 2000 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this decision.

Dated, Washington, D.C.
March 20, 2002

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member