U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICKY D. McCORMICK and U.S. POSTAL SERVICE,
KENNETT POST OFFICE, Kennett, MO

Docket No. 02-1122; Submitted on the Record;
Issued November 5, 2002

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issues are: (1) whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration.

On January 24, 2001 appellant, then a 50-year-old carrier technician, filed a claim for an April 11, 2000 employment injury. He stated that he was lifting heavy parcels weighing 60 to 65 pounds, resting them on his right hip, when he sustained a detached muscle at the hip and groin area at the right leg. On February 1, 2001 appellant stopped working, returning to work on February 5, 2001 at which time he filed a claim for a recurrence of disability. In a March 14, 2001 decision, the Office denied appellant's claims for compensation and recurrence of disability on the grounds that he did not establish that he was injured as he alleged. In an August 3, 2001 letter, appellant requested reconsideration. In a September 26, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that, as he had not raised substantive legal questions nor included new and relevant medical evidence in support of his request, his request was insufficient to warrant a review of its prior decision.

The Board finds that appellant did not establish that he was injured in the performance of duty.

An injury does not have to be confirmed by eyewitnesses in order to establish the fact 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 or her subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.[1] The employee has the burden

[1] *Merton J. Sills*, 39 ECAB 572 (1988).

of establishing the occurrence of the alleged injury at the time, place and 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 doubt upon the validity of the claim. However, his or her statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.[2]

In this case, appellant took nine months to report that he sustained an employment injury on April 11, 2000. In support of his claim, he submitted a May 2, 2000 report from Dr. James F. Hodgson, who stated that appellant had a medical injury and could not work from May 2 through May 10, 2000. Dr. Hodgson did not describe the nature of appellant's injury and did not discuss the cause of the injury. In a January 18, 2001 report, Dr. David Diffine, a Board-certified family practitioner, stated that he was treating appellant for a right groin strain, which he sustained after falling off a porch while delivering mail. The history in Dr. Diffine's report that appellant was injured after falling of a porch contradicts the history given by appellant in his claim that he was injured while lifting parcels and resting them on his hip. Furthermore, he did not file a claim for his alleged April 11, 2000 employment injury until January 24, 2001, approximately eight months later. He gave no explanation for the delay in filing his claim for compensation. The factors of inconsistent histories on how appellant sustained a right groin injury at work and the delay of eight months in filing a claim with no explanation for the cause of this delay considerable doubt on appellant's claim that he was injured at the time, place and in the manner alleged. Appellant, therefore, has not established that he sustained an employment injury on April 11, 2000 as he alleged.

The Board further finds, however, that the Office improperly denied appellant's request for reconsideration.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation, either under its own authority or on application by a claimant. Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law not previously considered by the Office or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[3] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[4] Evidence that does not address the particular issue involved also does not constitute a basis for

[2] *Carmen Dickerson*, 36 ECAB 409 (1985).

[3] 20 C.F.R. § 10.608(b).

[4] *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

reopening a case.[5] When a claimant fails to meet one of the above standards, the Office will deny the application for reconsideration without reopening the case for a review on the merits.[6]

In his request for reconsideration, appellant submitted treatment notes and the results of a January 26, 2001 functional capacity evaluation, submitted by a physical therapist. The physical therapist related, in a January 10, 2001 report, that appellant stated he was injured in April 2000, while lifting heavy parcels and placing them on his hip. His report was given at approximately the same time as Dr. Diffine's report with a history of injury that was consistent with appellant's history and contradicted the history given by Dr. Diffine. This history of injury, consistent with appellant's statement of how he was injured, constitutes new evidence in support of appellant's claim and calling into question the history given by Dr. Diffine that appellant was injured falling off a porch. The case must, therefore, be remanded for further development on determining whether appellant was injured at the time, place and in the manner he alleged. After further development as it may find necessary, the Office should issue a *de novo* decision.

The decision of the Office of Workers' Compensation Programs dated March 14, 2001 is hereby affirmed. The decision dated September 26, 2001 is hereby reversed and the case is returned to the Office for further proceedings in accordance with this decision.

Dated, Washington, DC
November 5, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[5] *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

[6] 20 C.F.R. § 10.608(b).