

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE H. TUTT and U.S. POSTAL SERVICE,
POST OFFICE, Garden City, NJ

*Docket No. 02-266; Submitted on the Record;
Issued October 21, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury on September 28, 1995 causally related to factors of his employment.

The Board finds that this case is not in posture for a decision due to an unresolved conflict in the medical opinion evidence.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³

¹ 5 U.S.C. §§ 8101-8193.

² *Shirley A. Temple*, 48 ECAB 404 (1997).

³ *Id.* at 407.

On August 14, 1996 appellant, then a 48-year-old motor vehicle operator, filed a claim for a traumatic injury to his neck and right shoulder on September 28, 1995 when he was loading a postcon (a piece of mail transport equipment) of mail and a bag extending above the top of the postcon hit the overhead door forcing the door forward and then back and causing the door to hit him in the head.

By letter dated September 3, 1996, the employing establishment challenged appellant's claim because appellant was being treated by a physician on January 10, 1995 for neck pain, eight months before his alleged neck injury at work on September 28, 1995; he did not seek medical treatment after the September 28, 1996 incident until March 1996; he received an award for fighting fires in late August 1995 as a volunteer fireman; and x-rays taken in January 19, 1996 showed degenerative changes to the neck.

By decisions dated October 25, 1996, July 18, 1997, October 7, 1998, August 25, 1999, November 13, 2000 and July 23, 2001, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to establish that he sustained an injury on September 28, 1995 causally related to his employment.

The record contains medical notes indicating appellant was treated for a neck problem on January 10, 1995 by Dr. Maria Noya, an internist.⁴ An x-ray taken on January 19, 1996 revealed degenerative changes at the cervical level in the spine.

The first time that appellant saw a physician for his September 28, 1995 neck problem was March 27, 1996.

In a letter dated September 9, 1996, Dr. Gregory Perrier, an orthopedic surgeon, stated that appellant had "a history of cervical spine injury on the job." Dr. Perrier's findings on examination included paraspinal muscle tenderness and spasm with radiculopathy to both upper extremities. He recommended further diagnostic tests.

In reports dated January 19, 1997 and July 16, 1998, Dr. Perrier stated that appellant had a history of being struck in the head on September 28, 1995 by a truck's overhead door, sustaining injury to his neck, back and right shoulder. He diagnosed "cervical spine discogenic disease secondary to work-related trauma."

A magnetic resonance imaging (MRI) scan report for September 18, 1997 indicated disc herniations in the cervical area.

⁴ In a report dated October 28, 1997, Dr. Noya stated that she treated appellant on January 10, 1995 for neck pain on the right side and diagnosed a muscle spasm.

In a report dated May 24, 1999, Dr. Perrier provided a history of appellant's condition, noting that a truck overhead door struck his head on September 28, 1995 at work. He diagnosed a herniated cervical disc and lumbar disc displacement and stated:

“Based on the history given by [appellant], review of medical reports prior to the examination and clinical findings, it is my opinion that the injuries sustained to his lumbar spine and cervical spine are a result of this trauma.”

* * *

“It is my professional opinion that [appellant] is totally disabled and his condition is causally related to the injuries sustained on September 28, 1995.”

In reports dated August 3, 2000 and January 9, 2001, Dr. Baburao Doddapaneni, a specialist in pain management, stated that appellant injured his neck, back and shoulder on September 28, 1995 at work when a truck door was accidentally released from its overhead position and fell down, striking appellant in the head. He stated that appellant sought medical treatment on September 28, 1995. Dr. Doddapaneni described appellant's course of treatment, provided findings on examination and diagnosed progressive cervical and lumbar radiculopathy, degenerative lumbar spine, and multiple herniated discs in the cervical and lumbar areas of the spine. He stated that appellant's conditions were directly related to the September 28, 1995 work incident when he was struck by a truck door. Dr. Doddapaneni stated:

“I cannot determine whether the work-related injury of [September 28, 1995] caused these disabling conditions or aggravated a preexisting, degenerative spine condition. It is beyond doubt, in my opinion, that the trauma of that incident directly and adversely affected the condition of [appellant's] spine. In either case, the injury of September 28, 1995 rendered [appellant] disabled.”

By letter dated June 6, 2001, the Office referred appellant, together with copies of medical evidence, and a statement of accepted facts and a list of questions, to Dr. Richard S. Goodman, a Board-certified orthopedic surgeon, for an examination and evaluation of whether appellant had any medical conditions caused or aggravated by the September 28, 1995 work incident.

In a report dated June 29, 2001, Dr. Goodman provided a history of appellant's condition and findings on examination. He diagnosed cervical and lumbosacral herniated discs. Dr. Goodman stated:

“Based upon the information provided to me, in 1995 [appellant] had a contusion of his head. The contusion has resolved. It is now six years old. [Appellant] now has cervical and lumbar herniated discs. The herniated discs were not caused or aggravated by the injury. The herniated discs are disabling, but the disability is not causally related to the on-the-job event. His low back and neck conditions were not aggravated by the injury. If he had not had the event, his condition would progress at this level anyway. He is not disabled for any work-related injury.”

Section 8123(a) of the Act provides, in pertinent part: “If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.”⁵

The Board finds that there exists in this case an unresolved conflict in the medical opinion evidence between appellant’s physicians, Drs. Perrier and Doddapaneni, and Dr. Goodman, the Office referral physician, as to whether appellant sustained an injury on September 28, 1995 when he was struck by the overhead door of a truck.

On remand, the Office should refer appellant, together with the case record and a statement of accepted facts, to an appropriate Board-certified specialist for an examination and evaluation of whether appellant sustained any injury as a result of the September 28, 1995 work incident.

The decisions of the Office of Workers’ Compensation Programs dated July 23, 2001 and November 13, 2000 are set aside and the case is remanded for further development consistent with this decision.

Dated, Washington, DC
October 21, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ 5 U.S.C. § 8123(a); *see James P. Roberts*, 31 ECAB 1010 (1980).