

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WALLACE L. SANTOS and U.S. POSTAL SERVICE,
POST OFFICE, Minneapolis, MN

*Docket No. 02-745; Submitted on the Record;
Issued October 24, 2002*

DECISION and ORDER

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

The issue is whether appellant has established an injury in the performance of duty on March 15, 2001.

On March 15, 2001 appellant filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained injuries as a result of an altercation with a coworker. Appellant indicated on the claim form that the coworker had pushed a table and flat tub into appellant, causing injury.

By decision dated May 11, 2001, the Office of Workers' Compensation Programs denied the claim. The Office determined that appellant had not established an incident as alleged, nor had he submitted sufficient medical evidence. In a decision dated August 16, 2001, the Office denied modification.

The Board finds that appellant has established an injury causally related to a March 15, 2001 employment incident.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² 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 that is alleged to have occurred. The second component is whether the

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

employment incident caused a personal injury and generally this can be established only by medical evidence.³

With respect to the occurrence of the March 15, 2001 employment incident as alleged, this case requires an assessment of apparently inconsistent accounts of the employment incident. Appellant alleged that there was a verbal altercation with a coworker, James Coleman, who then pushed a table with a tub of flats that struck appellant. In a March 15, 2001 statement, appellant also stated that after the incident another coworker, Willie Davis, had to restrain Mr. Coleman from further physical attack. Appellant has been consistent with respect to the relevant details of the altercation.⁴ On the other hand, the alleged assailant submitted a statement acknowledging a verbal altercation, but denying that he pushed any tables. The witness, Mr. Davis, submitted a brief statement indicating that he witnessed a verbal exchange between appellant and Mr. Coleman; he did not report witnessing a pushing of tables or that he had to restrain Mr. Coleman.⁵

The Board notes that an employee's statement regarding the occurrence of an employment incident is of great probative value and will stand unless refuted by strong or persuasive evidence.⁶ In view of the conflicting accounts of the incident, the Board will look to whether there are other inconsistencies that may cast doubt on the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast doubt on the validity of the claim.⁷

In this case, appellant promptly notified his supervisors on March 15, 2001 of the alleged incident; he also sought medical treatment that day, with physical findings reported on examination. The Board finds none of the above recognized inconsistencies were present in this case. Appellant's subsequent actions were consistent with the occurrence of the incident in the manner alleged by appellant. Based on a review of all of the evidence of record, the Board finds that the preponderance of the evidence supports a finding that a March 15, 2001 incident occurred in the manner alleged by appellant.

The remaining issue is whether there is sufficient medical evidence to establish an injury causally related to the employment incident. In a treatment note dated March 15, 2001, Dr. Mary Arneson, an internist, provided a history of the employment incident and noted results on examination. Dr. Arneson noted mild swelling of the left cheek, with limitation of motion in arm and shoulder. She also noted that appellant had a history of rheumatoid arthritis since 1991

³ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁴ The Office found that appellant was inconsistent in his allegations, but the evidence cited for this finding is not compelling. For example, the Office found that in an April 1, 2001 response, appellant had alleged that he was attacked twice by Mr. Coleman. The word "twice" appears in the April 1, 2001 response, but it was inserted at the end of a sentence and may be in reference to a statement regarding management instructions.

⁵ Mr. Davis stated that he told Mr. Coleman, "you guys leave it alone."

⁶ *Thelma Rogers*, 42 ECAB 866 (1991).

⁷ *Anthony J. DeWilliams*, 48 ECAB 410 (1997); *Dorothy Kelsey*, 32 ECAB 998 (1981).

and was currently on light duty as a result. Dr. Arneson diagnosed facial contusion, tooth contusion, arm strains or contusions. In a March 15, 2001 form report, she diagnosed bilateral elbow and shoulder strains and facial contusion; the form contains a checkmark “yes” as to “work-related illness/injury.” The Board notes that appellant was seen on March 16, 2001 by Dr. Peter Badroos, a family practitioner, who provided a history and diagnosed post status work assault incident with resolved bilateral shoulder/elbow pain and resolved facial contusions.

In a report dated May 30, 2001, Dr. Travis Lockwood, a family practitioner, provided a history of injury and results on examination. Dr. Lockwood stated, “It is my opinion the patient sustained some trauma which caused a strain over his forearm and left shoulder as well as a contusion to his cheek area.” He indicated that appellant was back to his prior work restrictions and continued to have limitations due to the preexisting rheumatoid arthritis.

The Board finds that the medical evidence is sufficient to establish a left shoulder and forearm strain, as well as a facial contusion, causally related to the March 15, 2002 employment incident. Appellant promptly sought medical treatment and submitted contemporaneous reports with findings consistent with a strain and contusion. He also submitted a medical report containing an unequivocal opinion, based on a complete background, on causal relationship between specific diagnosed conditions and the employment incident. The evidence is, therefore, sufficient to establish fact of injury in this case. On remand the Office should determine whether there was any period of disability associated with the employment injuries. After such further development as is necessary, it should issue an appropriate decision.

The August 16 and May 11, 2001 decisions of the Office of Workers’ Compensation Programs are hereby reversed.

Dated, Washington, DC
October 24, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member