

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MAE H. HENRY and U.S. POSTAL SERVICE,  
POSTAL & DISTRIBUTION CENTER, Inglewood, CA

*Docket No. 02-860; Submitted on the Record;  
Issued September 5, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,  
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained an injury in the performance of duty on September 20, 2001.

On September 20, 2001 appellant, then a 46-year-old clerk, filed a notice of traumatic injury (Form CA-1) alleging that on that day while pushing a door open at work, the door came back unexpectedly and hit her on the right side of her head. Appellant stated that she was dazed and her vision blurred. The employing establishment controverted appellant's claim.

By letter dated October 11, 2001, the Office of Workers' Compensation Programs requested detailed factual information from appellant, specifically, an explanation of how the injury occurred and a statement from any witness to the incident. Appellant responded by letter dated November 5, 2001, received by the Office on November 14, 2001. Accompanying appellant's November 5, 2001 letter was an undated statement from the person on the other side of the door.

By decision dated November 15, 2001, the Office denied appellant's claim for failure to establish fact of injury. The Office found that appellant, a federal employee, filed a timely claim for compensation. However, the Office found that there were inconsistencies and discrepancies in the case regarding whether or not the claimed incident occurred at the time, place and in the manner alleged. The Office stated that no response to its October 11, 2001 request for additional information was received. The Office did not address the medical evidence.

The Board finds that appellant has established that the September 20, 2001, incident occurred at the time, place and in the manner alleged and that appellant sustained an injury as a result of the incident specifically, "slight contusion right side of head."

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 limitations of the Act.<sup>2</sup> An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,<sup>3</sup> that the injury was sustained while in the performance of duty,<sup>4</sup> and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.<sup>5</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>6</sup>

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 which is alleged to have occurred.<sup>7</sup> In this case, the Office found that there were such inconsistencies in the evidence as to cast doubt that the incident occurred as alleged. Appellant has consistently maintained that, on September 20, 2001, while going through a doorway, that the door unexpectedly came back in her direction and that the door hit her on the right side of her head. The Board notes that appellant stated that, after she hit her head, the door opened and a person on the other side asked if she was alright. The record contains a statement from Lonnie Turner, the person on the other side of the door. Mr. Turner stated that the door opened and hit his toe, although he stated that he did not put his hands on the door, he stated that he stopped the door from putting any more pressure on his toe. Mr. Turner also stated that he heard a loud noise and the door opened and he saw appellant looking dazed and that she told him that the door hit her in the head. Appellant was seen at the employing establishment medical unit the same day as the incident and by her own doctor the next day. Also, appellant filed her claim the day of the incident. Consequently, the Board finds that appellant has established that the incident occurred on September 20, 2001, as alleged.

The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. Appellant was initially seen at Health Works Medical Group on September 20, 2001 with complaints of head trauma, nausea and vomit times one. Objective findings were erythema and edema. The

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Steven R. Piper*, 39 ECAB 312 (1987).

<sup>6</sup> *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> *Elaine Pendleton*, *supra* note 2.

diagnosis was slight contusion on right side of the head. Medications prescribed were Tylenol 50 mg., cold pack.

Dr. Marvin White, an internist, submitted a report dated September 21, 2001, wherein Dr. White reported that appellant had been under his care from September 21 to October 21, 2001. He reported a contusion to the head with postconcussion syndrome, severe strain and spasms to the cervical spine. Dr. White noted that appellant sustained a work-related injury and was totally disabled and could not work.

The Boards finds the reports from Dr. White and U.S. Health Works Medical Group establish that appellant sustained a contusion to the head with postconcussion syndrome and severe strain and spasms to the cervical spine.

Accordingly, the November 15, 2001 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for a determination of entitlement to continuation of pay, period or periods of disability and medical expenses.

Dated, Washington, DC  
September 5, 2002

Michael J. Walsh  
Chairman

Alec J. Koromilas  
Member

Michael E. Groom  
Alternate Member