

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN C. ANDERSON, JR. and U.S. POSTAL SERVICE,  
POST OFFICE, Richmond, CA

*Docket No. 02-812; Submitted on the Record;  
Issued April 2, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty on April 7, 2000.

On May 4, 2000 appellant, then a 51-year-old dock clerk, filed a traumatic injury claim alleging that on April 7, 2000 when he pulled a chain to open a dock door he felt a sharp pain on both sides of his stomach, which resulted in a hernia. The employing establishment stated that appellant stopped work on April 28, 2000 and returned to work on May 2, 2000.

Accompanying the claim were: a May 9, 2000 employing establishment letter controverting appellant's claim and continuation of pay; a May 1, 2000 visit certification form from Kaiser Permanente showing appellant's visit that day and stating that appellant stated that he was unable to work from April 28 through May 1, 2000 and diagnosing pain from hernia by Diane King, a nurse practitioner; and an undated interview of appellant by an unknown interviewer.

By letter dated May 24, 2000, the Office of Workers' Compensation Programs requested detailed factual and medical information from appellant. Specifically, how the injury occurred, the identity of any witnesses, the immediate effects of the injury and what he did immediately thereafter. Also requested was an explanation of why he delayed in seeking medical attention, and most importantly, a medical report which included dates of examination and treatment, a history of injury given to the physician, results of all x-rays and tests, a diagnosis and a physician's opinion with supporting rationale as to the causal relationship between his condition and the alleged April 7, 2000 incident.

On June 2, 2000 the record was supplemented with a May 8, 2000 medical report by Dr. Roman Kownacki, Board-certified in preventive medicine, who stated that, "Patient States: "As I pulled the chain to lift the dock door (stall 65) I felt sharp pain on both sides of my lower stomach." Dr. Kownacki noted a history of previous bilateral hernia, diagnosed bilateral hernia

and noted that hernia surgery was scheduled for May 18, 2000. On June 5, 2000 the record was supplemented with a May 15, 2000 form report by Dr. J. Prudhomme, Board-certified in internal and preventive medicine, who saw appellant that day and diagnosed bilateral hernia.

By decision dated June 29, 2000, 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 in the case regarding whether or not the claimed event, incident or exposure occurred at the time, place and in the manner alleged. The Office also found that the medical evidence failed to demonstrate that appellant sustained an injury as alleged, or that an injury was causally related to the alleged April 7, 2000 incident.

By letter dated July 27, 2000, appellant requested an oral hearing before an Office hearing representative which was held on November 9, 2000.

On December 8, 2000 the record was supplemented with an April 10, 2000 progress record and visit verification form from Kaiser, by Dr. John Tysell, a Board-certified internist, showing that appellant was seen that day and diagnosed with a hernia. Also received was a June 13, 2000 progress report by Dr. Kownacki indicating that appellant was seen for a post surgery follow-up visit, a May 15, 2000 progress record by Dr. Prudhomme and a May 8, 2000 progress record by Dr. Kownacki.

On December 18, 2000 the record was supplemented with a May 18, 2000 operation record by Dr. Judith Park, a Board-certified surgeon, revealing that appellant underwent bilateral inguinal hernia repair on that day.

By decision dated February 20, 2001, an Office hearing representative affirmed the Office's June 29, 2000 decision. The hearing representative found that the factual and medical evidence failed to establish appellant's claim.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty on April 7, 2000.

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, and 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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

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 the factual evidence was insufficient to establish that the claimed incident occurred at the time, place and in the manner alleged. Appellant has consistently maintained that on April 7, 2000 he was performing his duties as a dock clerk, *i.e.*, pulling a chain to open a dock door, when he felt a sharp pain on both sides of his stomach, which resulted in a hernia. There is no dispute that on April 7, 2000 appellant was performing his duties. Consequently, the Board finds that appellant has established that the incident occurred on April 7, 2000, as alleged.

The second component of fact of jury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>8</sup>

In this case the only contemporaneous medical evidence is an April 10, 2000 progress record by Dr. Tysell, a Board-certified internist, who diagnosed a hernia. The progress record does not contain a history of an April 7, 2000 employment incident, or address the issue of causal relationship between a diagnosed condition and the April 7, 2000 employment incident. Therefore, the April 10, 2000 progress record is insufficient to establish appellant's claim.

The other medical evidence submitted, a May 8, 2000 medical report by Dr. Kownacki, Board-certified in preventive medicine, indicated that he first examined appellant that day. Dr. Kownacki saw appellant approximately one month after the incident. He gave a history of injury and diagnosed bilateral hernia. However, the issue of causal relationship was not addressed. Dr. Kownacki's May 8, 2000 report is insufficient to establish appellant's claim.

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<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.

<sup>8</sup> *Kathryn Haggerty*, 45 ECAB 383 (1994), *see* 20 C.F.R. § 10.110(a).

On a May 15, 2000 visit verification form Dr. Prudhomme, Board-certified in internal and preventive medicine, stated that appellant was seen that day and diagnosed with a bilateral inguinal hernia. The May 15, 2000 form does not include a history of injury or address a causal relationship between a diagnosed condition and the April 7, 2000 employment incident and is insufficient to establish appellant's claim.

A June 13, 2000 progress report by Dr. Kownacki indicated that appellant was seen for a post surgery follow-up visit and returned appellant to work with restrictions. The report does not include a history of injury or address a causal relationship between a diagnosed condition and the April 7, 2000 employment incident. The June 13, 2000 report is not sufficient to establish appellant's claim. A May 15, 2000 progress record by Dr. Prudhomme stated that appellant was seen that day, diagnosed bilateral hernia and notes surgery was scheduled for May 18, 2000. A May 8, 2000 progress record by Dr. Kownacki diagnosed a bilateral hernia, stated that surgery was pending May 18, 2000, and that [appellant] was "injured April 7, 2000." Dr. Prudhomme's and Dr. Kownacki's reports did not include a history of injury, or address a causal relationship between a diagnosed condition and the April 7, 2000 employment incident. Therefore, they are not sufficient to establish appellant's claim.

In a May 18, 2000 operation record by Dr. Judith Park, a Board-certified surgeon, she described the bilateral inguinal hernia repair that appellant underwent on that day. Dr. Park's report does not include a history of injury or address a causal relationship between a diagnosed condition and the April 7, 2000 employment incident and is not sufficient to establish appellant's claim.

By letter dated May 24, 2000, the Office advised appellant of the type of evidence needed to support his claim, but appellant failed to provide such evidence. The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained a bilateral inguinal hernia in the performance of duty on April 7, 2000.

The decision of the Office of Workers' Compensation Programs dated February 20, 2001 is affirmed, as modified.

Dated, Washington, DC  
April 2, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member