

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of STEVEN E. IVERS and U.S. POSTAL SERVICE,
POST OFFICE, Boston, MA

*Docket No. 03-851; Submitted on the Record;
Issued August 18, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a back and leg condition in the performance of duty as alleged.

On March 20, 2001 appellant, then a 51-year-old letter carrier, filed an occupational disease claim alleging that he developed back and leg pain while performing his duties. He stated: "When I have a day off I don't have back or leg pain. When I start carrying my route I get leg pain and shortly after I get back pain." Appellant indicated that he first became aware of this condition on November 22, 1999 and realized that the condition was caused or aggravated by his employment on March 16, 2001.¹ He stopped work on March 22, 2001 and returned on April 19, 2001.

In a letter dated May 17, 2001, the Office of Workers' Compensation Programs advised appellant that additional factual and medical evidence was needed in order to make a determination on his claim. He submitted a June 16, 2001 report, in which Dr. Bruce Churchill, a Board-certified family practitioner, indicated that appellant reported low back pain since September 1999, with recurrent symptoms and found disability starting April 18, 2001. In another report dated June 16, 2001, he indicated that appellant's back pain, knee pain and sciatica were worsened by heavy lifting, pushing a mail cart, negotiating stairs and engaging in repetitive bending and twisting.

By decision dated June 21, 2001, the Office denied appellant's claim on the grounds that he failed to establish that he suffered an injury in the performance of duty as alleged.

¹ The Board notes that appellant filed a traumatic injury of November 22, 1999, which has not been adjudicated by the Office.

In a letter dated July 16, 2001, appellant requested an oral hearing and submitted additional medical evidence. During a hearing held on January 17, 2002, appellant testified regarding his condition and stated:

“It’s just something that kind of came on while I was walking up and down stairs. It was very difficult coming down stairs or downhill. [A]s of last winter, we had three days of snow and I was still working with a push cart, but I couldn’t use the pushcart because of the snow. So I carried the bag on my shoulder. [T]hat Friday ... I went over by a half an hour or so on my route. I came back to the office barely walking.”

* * *

“I think it was March 20, [2001] a Friday afternoon.”

* * *

“I was just carrying the satchel. After a while, I [a]m not carrying the satchel [a]nd going up over snow and doing my job, it just wore me out [a]nd everything took longer to do.”

Regarding the day of the alleged incident, appellant further testified: “With the pushcart and the Celebrex that I was taking, I was able to work a full day [a]nd it wasn’t until I didn’t use that pushcart in the snow that everything kicked in and both legs and my back that day was real bad.”

Regarding the weather conditions, appellant testified:

“The snow was all over the place. I don’t think it was snowing that day, [b]ut the snow was already on the sidewalks and streets, is why I couldn’t use my pushcart. I found out when I come back, there was two other carriers that had pushcarts that didn’t even go out that day. They stayed in and threw mail or something. I just left my pushcart in the car and walked the route.”

Appellant further testified that leaving his pushcart and walking the route that day because the snow worsened his condition. He testified that he notified his supervisor that he was in pain as soon as he returned to the office and indicated that he wished to see his physician. Appellant testified that he received medical treatment on March 27, 2001 soon after the alleged work incident.

Following the hearing, appellant submitted additional medical evidence, which indicated that from September 10 to December 7, 1999 he lost intermittent time from work and received periodic treatment for his back and leg conditions.

By decision dated March 19, 2002, the Office hearing representative affirmed the June 21, 2001 decision. The Office hearing representative determined that appellant failed to establish the factual component of the claim, namely that he sustained a back injury at the time, place and in the manner alleged.

In a letter dated November 4, 2002, appellant, through his representative, requested reconsideration. His counsel argued that on March 20, 2001 appellant found it impossible to use his push cart because of the heavy accumulation of snow on the ground and that, as a result, he had to use his shoulder satchel. Appellant's representative indicated that, when he finished working that day, he requested two day's absence due to the pain he experienced while on his route.

Appellant submitted evidence, including a medical report, personnel information, a national weather summary and a witness statement. He submitted a medical report from Dr. Joel Saperstein, a Board-certified orthopedic surgeon, dated January 30, 2002, in which the physician discussed that commencing in the winter of 2001 appellant began having leg discomfort. He reported that on March 20, 2001 appellant found it impossible to use the pushcart because of all the snow and that he had to use his shoulder satchel and then had to climb stairs, which complicated his preexisting back problems and commenced problems with his knees. Dr. Saperstein diagnosed chronic back and leg problems and bilateral degenerative arthritis of both knees, which he opined was causally related to work activities including carrying heavy mail sack for long distances and ascending and descending flights of stairs in all types of weather.

Appellant submitted personnel information including two PS Forms 3971 (Request for Notification of Absence) dated March 16 and 17, 2001, which indicated that he requested leave on March 17, 2001 for back and leg pain due to an injury that had him unable to work." The weather summary submitted from the National Weather Service dated March 7, 2001, reported that there had been a major winter storm affecting Southern New England on March 5 and 6, 2001, which caused sleet, freezing rain and snow. The weather report indicated that Middlesex County, received between 10 and 27.5 inches of snow accumulation during the March 5, 2001 snowstorm.

Lisa Archdeacon submitted a statement dated October 10, 2002, in support of the claim. She stated: "I [a]m a letter carrier at the Medford Post Office, 20 Forest St. During around the third week of March last year, I was on light or limited duty and had the use of a pushcart to carry my route, but the accumulation of snow at that time, I was unable to use my cart so I stayed in the employing establishment and did light-duty work such as answering the telephone, sorting mail, etc."

By decision dated January 31, 2003, the Office denied modification of the prior decision, finding that the evidence submitted on reconsideration failed to contain a detailed description of the employment condition or facts, which caused or adversely affected the condition for which compensation was claimed. The Office further found that the medical evidence was devoid of a rationalized medical opinion based on a complete factual and medical background, which established a causal relationship between the claimed condition and the implicated employment factors.

The Board finds that appellant failed to establish that he sustained a back and leg condition in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act 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.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁴ An employee has not met his or her burden of proof in establishing the occurrence of an injury, when there are such inconsistencies in the evidence to cast serious doubt upon the validity of the claim.⁵ 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁶ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong persuasive evidence.⁷

A claimant has the burden of establishing by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by employment factors.⁸ The burden of proof includes the necessity of submitting medical opinion evidence, based upon a proper factual and medical background, establishing such disability and its relationship to the employment.⁹

The Board finds that the record contains an inconsistent history of injury in this case, that it cannot be determined how appellant sustained an injury to his back or knees at the time, place or in the manner alleged. On his CA-2 claim form appellant vaguely indicated that, "when I have a day off I don't have back or leg pain. When I start carrying my route, I get leg pain and shortly after I get back pain." Appellant's description of the cause of injury varied. During his testimony at the January 17, 2002 hearing, appellant indicated that his leg and back condition

² *Elaine Pendleton* 40 ECAB 1143, 1145 (1989).

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

⁴ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984)

⁵ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁶ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

⁷ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

⁸ *Sandra Davis*, 50 ECAB 450 (1999).

⁹ *See Michael E. Smith*, 50 ECAB 313 (1999); *Yvonne R. McGinnis*, 50 ECAB 272 (1999).

commenced on March 20, 2001 following a three-day snow storm, when he was unable to use his pushcart due to snow accumulation. He testified that he was forced to carry his shoulder satchel on his route, which caused pain. However, appellant generally stated that his condition was “something that kind of came on while I was walking up and down stairs.” Medical reports contained in the record establish that appellant had a preexisting back and leg condition dating back to 1999, with recurrent symptoms in February 2000 and address various employment duties including engaging in heavy lifting and pushing mail carts as causes of injury. In two reports of record dated June 16, 2001, Dr. Churchill indicated that appellant reported low back pain since September 1999, with recurrent symptoms and found disability starting April 18, 2001. He opined in the second report that appellant’s back pain, knee pain and sciatica were worsened by heavy lifting, pushing a mail cart, negotiating stairs and engaging in repetitive bending and twisting. The Board finds that such reports are not in accord with appellant’s later explanation that his problems were due to the March 20, 2001 activities. Dr. Churchill found disability starting April 18, 2001 and implicated different activities as the cause of appellant’s back pain.

On the claim form appellant indicated that he first became aware of the illness or disease on November 22, 1999 and realized that the condition was caused or aggravated by his employment on March 16, 2001. There is no apparent significance connected to the date of November 22, 1999, other than the medical evidence submitted, which supports that he suffered from back and leg conditions in 1999. Appellant makes no further connection with the November 22, 1999 date and his work factors and asserted through testimony at the oral hearing that his injury occurred after a heavy snowfall accumulation on March 20, 2001. The 3971 personnel forms submitted by appellant in support of the claim revealed that he requested time off on March 17, 2001 for a back and leg injury. When appellant later attributed his condition to the events of March 20, 2001, he did not adequately explain the other evidence of record documenting other dates and causes of his claimed injury. The evidence of record is inconsistent as to the exact cause of appellant’s condition and the date upon which it occurred.

Appellant has failed to submit sufficient factual information to establish work factors for which he attributes caused the claimed condition. The Office properly determined that appellant failed to carry his burden of proof in establishing that he developed a back and leg condition causally related to employment factors, because he failed to clearly identify work factors which caused the claimed condition. Accordingly, he has not met his burden of proof to establish that he sustained an employment-related injury in this case.¹⁰

¹⁰ As noted above, appellant filed a traumatic injury claim with a date of injury of November 22, 1999, which has not been adjudicated by the Office. As no decision has been issued on this claim, the Board has no jurisdiction to consider this claim. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated January 31, 2003 is affirmed.

Dated, Washington, DC
August 18, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member