U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JONI SCHROEDER and U.S. POSTAL SERVICE,
POST OFFICE, Albuquerque, NM

Docket No. 03-1493; Submitted on the Record;
Issued August 13, 2003

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that she sustained a traumatic injury in the performance of duty.

On February 21, 2003 appellant, then a 37-year-old sales and service associate, filed a claim for a traumatic injury which occurred on February 19, 2003. Appellant originally injured her foot in 1999 when she fell off a curb while working as a clerk. She related that her right ankle had permanent nerve damage and that she had constant pain in her knees, hips and both ankles. Appellant did not identify a particular incident that occurred on February 19, 2003. Her supervisor indicated that the alleged injury occurred "as per" appellant's statement but did not specifically address an incident occurring on February 19, 2003.

By letter dated March 7, 2003, the Office of Workers' Compensation Programs advised appellant regarding what additional information she needed to process her claim. The Office related that it needed a diagnosed condition resulting from the claimed February 19, 2003 injury and a physician's opinion as to how her injury resulted in the diagnosed condition. Appellant was further directed to provide a detailed description as to how her injury occurred. She was given 30 days to submit the requested information.

In a March 6, 2003 letter, Dr. Joel M. Jones, a Board-certified family practitioner, related that the type of job appellant holds could exacerbate a previous on-the-job ankle injury. He related that hip, knee and ankle injuries could cause pain in the other joints of the lower extremity by causing changes in the gait and putting different mechanical stresses on the lower extremity joints. Other contributing factors could be appellant's obesity along with an associated overuse and/or previous injury. He related that he did not have notes from Dr. Foster relating to the original injury, but advised that appellant needed a period of time to rehabilitate an injury that quite possibilbly was initiated by an on-the-job event. Dr. Jones did not address an incident occurring on February 19, 2003.

By decision dated April 9, 2003, the Office denied the claim. The Office determined that appellant had not established that she experienced the events that occurred as alleged. The Office additionally noted that she failed to provide a statement, which identified the employment factor she believed caused or contributed to her injury and, as a result, the claim could not be properly developed.

The Board finds that appellant failed to establish that she sustained a traumatic injury while in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of 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. Regardless of whether the asserted claim involves a traumatic injury or occupational disease, an employee must satisfy this burden of proof.[1]

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.[2]

The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.[3]

The Office denied the claim because it found that appellant did not establish the first component of fact of injury; whether she actually experienced the employment incident that allegedly caused an injury. In particular, the Office explained that appellant did not identify the employment factor that she believed caused or contributed to her claimed injury. The Office noted that it provided appellant an opportunity to provide such information but that such information was not received. While appellant submitted a report from Dr. Jones, this report does not identify any employment incident occurring on February 19, 2003 that allegedly caused or aggravated the claimed injury. The Board notes that, while appellant's February 21, 2003 claim asserted that she was injured on February 19, 2003, there is no evidence of record describing any incident on that date that caused or aggravated the claimed condition. Instead, appellant's claim only refers to a purported 1999 injury and does not specifically indicate how any employment activity on February 19, 2003 caused or aggravated a condition. As the first component to be established is that the employee actually experienced the employment incident

[1] *Gary J. Watling*, 52 ECAB 278 (2001).

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

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

which is alleged to have occurred, appellant failed to meet her burden of proof as she has not identified a particular incident that occurred on the claimed date of injury, February 19, 2003.

The decision of the Office of Workers' Compensation Programs dated April 9, 2003 is hereby affirmed.[4]

Dated, Washington, DC
August 13, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

[4] The record contains additional evidence that was submitted after the Office issued its April 9, 2003 decision. The Board has no jurisdiction to review this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c); *Robert D. Clark*, 48 ECAB 422, 428 (1997). Appellant may submit this evidence to the Office with a request for reconsideration pursuant to 20 C.F.R. § 10.606(b).