

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DEANNA L. LUEDTKE and U.S. POSTAL SERVICE,  
POST OFFICE, Juneau, WI

*Docket No. 03-2151; Submitted on the Record;  
Issued November 14, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant established that she sustained a right leg injury causally related to factors of her federal employment.

On April 23, 1998 appellant, then a 49-year-old clerk, filed a traumatic injury claim, alleging that on April 18, 1998 she was injured when an all purpose container (APC) door struck her on the right shin, causing a one-inch abrasion, minimal bleeding and severe pain. Appellant's claim form contains a statement from Euranna C. Blathers who indicated that she witnessed the APC door fall down and hit appellant's leg, and is further signed by appellant's supervisor, who indicated that appellant reported the incident to her on April 18, 1998. Appellant's claim form also indicates that she did not lose any time from work and that she first sought medical treatment from the employing establishment's health unit on April 23, 1998. Appellant's claim was apparently never adjudicated by the Office of Workers' Compensation Programs. On March 30, 2002 appellant filed a claim for a recurrence of disability, alleging that on March 15, 2002 she began experiencing sharp pains in the area of the original abrasion. Appellant's claim form indicated that she had not worked since June 16, 2001. Appellant submitted a copy of her original claim together with her claim for a recurrence of disability.

By letter dated April 26, 2002, the Office informed appellant that the evidence received was insufficient to establish her claim, and asked that she submit additional factual and medical evidence in support of her claim. The Office specifically requested that appellant submit records related to any treatment she received in connection with her right leg injury, from April 18, 1998 to the present. In addition, the Office asked appellant to explain why she delayed in submitting her claim to the Office, as her claim form indicated that her supervisor signed her claim form on April 23, 1998.

In response to the Office's request, appellant submitted a narrative statement, as well as medical reports and treatment notes from 2002 in support of her claim. Appellant stated that she was not sure why there was a delay of five days between the April 18, 1998 injury and the signing of her claim by her supervisor on April 23, 1998. Appellant also submitted a letter from

the employing establishment's health unit acknowledging her request for medical records and noting that no records pertaining to the original April 18, 1998 injury could be found.

In a decision dated June 3, 2002, the Office denied appellant's claim finding that, while she established that the claimed April 18, 1998 employment incident occurred, she did not provide any contemporaneous medical evidence which established that she sustained an injury as a result of the April 18, 1998 incident. The Office noted that, while the record contained an x-ray report dated April 23, 1998, the findings were normal.

By letter dated June 7, 2002, appellant requested an oral hearing that was held on May 7, 2003. Subsequent to the hearing, appellant submitted additional medical evidence in support of her claim, including an employing establishment health unit treatment note dated April 23, 1998. In a decision dated June 20, 2003, an Office hearing representative affirmed the Office's prior decision. The hearing representative specifically noted that, while appellant had also filed a claim for a recurrence of disability, this could not be established without first establishing her claim for the original April 18, 1998 injury.

The Board finds that the case is not in posture for a decision.

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 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. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

As the Office found in its June 3, 2002 and June 20, 2003 decisions, the evidence of record supports the fact that the claimed incident of an APC door striking appellant's shin occurred at the time, place and in the manner alleged.

The case therefore rests on whether the incident at work caused an injury. The Office denied appellant's claim stating that appellant had not submitted any medical evidence contemporaneous to the April 18, 1998 incident which established that she had sustained an injury. Although causal relationship generally requires a rationalized medical opinion, the Office

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Kathryn A. Teul-Gillem*, 52 ECAB 451 (2001); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("occupational disease" and "traumatic injury" defined).

may accept a case without a rationalized medical report when one or more of the following criteria, as set forth in the Office's procedure manual,<sup>3</sup> are satisfied:

“(a) The condition reported is a minor one which can be identified on visual inspection by a lay person (*e.g.*, burns, lacerations, insect sting or animal bite);

“(b) The injury was witnessed or reported promptly and no dispute exists as to the fact of injury; and

“(c) No time was lost from work due to disability.”

In the present case, the condition reported, a contusion to appellant's right shin, meets the first criterion as the type of condition that can be identified on visual inspection by a lay person. There was no indication that the contusion was considered a serious condition. The first criterion is, therefore, satisfied.

The second criterion is also satisfied. Appellant's supervisor signed the CA-1 form on April 23, 1998, and acknowledged having been notified by appellant on April 18, 1998, the date of the incident. In addition, the CA-1 form contains a statement signed by Ms. Blathers, who stated that she saw the APC door strike appellant's right leg. No dispute exists as to the fact of injury. As appellant's supervisor also noted on the CA-1 form that appellant did not stop work due to the April 18, 1998 employment injury, and as appellant has not claimed disability due to this incident, the third criterion is also met. Moreover, while the Board finds that the satisfaction of the three criteria means that a medical report is not necessary in this case, the Board notes that the record does contain an April 23, 1998 treatment note from the employing establishment's health unit. In this report, a physician, whose signature is illegible, noted that appellant reported that, on April 18, 1998, a gate fell on her right lower extremity. The physician further noted that physical examination of appellant's right leg revealed an abrasion of the anterior shin, a tender tibia and medial swelling. The physician diagnosed a contusion of the right leg and ordered an x-ray of the extremity.<sup>4</sup> In addition, the Board notes that there is no medical evidence negating that an injury occurred due to the April 18, 1998 workplace incident.<sup>5</sup> While the record contains an x-ray report dated April 23, 1998 from Dr. Grossman, who noted that three x-ray views of appellant's right ankle revealed no evidence of fracture or disruption of the ankle mortise, and that the ankle was normal, the Board notes that this evidence does not refute that appellant may have sustained an injury which did not involve the ankle bones. Accordingly, the Board finds that the record establishes that an injury occurred in the performance of duty on April 18, 1998.

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<sup>3</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3d(1)(a)-(c) (June 1995); *see also Janice Guillemette*, 54 ECAB \_\_\_\_ (Docket No. 03-1124, issued August 25, 2003); *Timothy D. Douglas*, 49 ECAB 558 (1998).

<sup>4</sup> The Board notes that this report was most likely prepared by a Dr. Kaftan. Appellant testified that she was initially treated by a Dr. Kaftan, and this is consistent with the radiological report of Dr. Ronald E. Grossman, who noted that a Dr. Kaftan ordered the x-rays.

<sup>5</sup> *See Thelma Rogers*, 42 ECAB 866 (1991).

Because the Office made no findings as to whether appellant was entitled to any medical benefits or any periods of disability, or whether the April 18, 1998 employment injury resulted in any continuing condition for which she would be entitled to compensation benefits, the case will be remanded for further development.<sup>6</sup> After such further development as it considers necessary, the Office shall issue a *de novo* decision on appellant's entitlement to benefits.

Accordingly, the decision of the Office of Workers' Compensation Programs dated June 20, 2003 is set aside and the case is remanded for further development consistent with this opinion.

Dated, Washington, DC  
November 14, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>6</sup> See *Janice Guillemette*, *supra* note 3; *Timothy D. Douglas*, *supra* note 3.