

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL A. RICE and U.S. POSTAL SERVICE,
WESTSIDE STATION, Olympia, WA

*Docket No. 03-1931; Submitted on the Record;
Issued October 23, 2003*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of duty.

On May 9, 2003 appellant, then a 34-year-old letter carrier, filed a traumatic injury claim alleging that on May 7, 2003 he hurt his right ankle while in the performance of duty. Appellant stopped work on May 7, 2003. He submitted factual and medical evidence in support of his claim. The employing establishment submitted a May 19, 2003 letter controverting appellant's claim on the grounds that he did not exhibit any signs that he was hurt on the date of injury, he provided an inconsistent history as to how he sustained an ankle injury and failed to show that his injury was sustained in the performance of duty.

By letter dated May 28, 2003, the Office of Workers' Compensation Programs advised appellant that the evidence submitted was insufficient to establish his claim. The Office advised him of the factual and medical evidence needed to establish his claim. In response, appellant submitted additional factual and medical evidence.

By decision dated June 30, 2003, the Office found the evidence of record insufficient to establish that appellant sustained an injury in the performance of duty.¹

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty.

¹ The Board notes that, subsequent to the Office's June 30, 2003 decision, the Office received additional factual and medical evidence. In addition, appellant submitted new medical evidence on appeal. The Board, however, cannot consider evidence that was not before the Office at the time of the final decision. See *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952); 20 C.F.R. § 501.2(c).

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his claim, including that he sustained an injury while in the performance of duty and that he had disability as a result.³ In accordance with the Federal (FECA) Procedure Manual, to determine whether an employee actually sustained an injury in the performance of his duty, the Office begins with the analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered, in conjunction with the other.

The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.⁴ In order to meet his burden of proof to establish the fact that he sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that he actually experienced the employment injury or exposure at the time, place and in the manner alleged. The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵ The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.⁶ The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.⁷

The Office found the evidence of record insufficient to establish that appellant actually experienced the alleged incident. An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment, may cast sufficient doubt on an employee's statements in determining whether he has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸

² 5 U.S.C. §§ 8101-8193.

³ *Charles E. Evans*, 48 ECAB 692 (1997); *see* 20 C.F.R. § 10.110(a).

⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5q and 10.5ee ("occupational disease" and "traumatic injury" defined, respectively).

⁶ *Lourdes Harris*, 45 ECAB 545 (1994); *see* *Walter D. Morehead*, 31 ECAB 188 (1979).

⁷ *Charles E. Evans*, *supra* note 3.

⁸ *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

On his claim form, appellant stated that he hurt his right ankle when he slipped in a hole in the lawn. He further stated that he came down hard on his right ankle and it bent inward. On the reverse of the claim form, Mary C. Doxtator, an employing establishment supervisor, indicated that appellant reported to the morning supervisor that his injury occurred the prior Tuesday and that he told an evening supervisor that he sustained injury on the prior Wednesday, but did not experience any difficulty until Thursday, his day off from work. In a May 16, 2003 memorandum, Ms. Doxtator stated that on May 7, 2003 she observed appellant, when he returned to the office after completing his route and helping on another route, for a total of 10.46 hours when he left work. She further stated that appellant had a strong purposeful walk when he approached the cage inside the office and his vehicle in the parking lot. Ms. Doxtator noted that appellant got into his car and drove off cheerfully saying goodbye. She related that appellant was not one to ignore physical discomfort because he was one of the most vocal employees when he had a problem. Ms. Doxtator stated that appellant never said a word about having any type of incident that caused him pain or discomfort when he left work on Wednesday. Ms. Doxtator indicated that on Friday, May 9, 2003 appellant stated that he could not bring in his Form CA-1, because he could not drive. She noted that appellant was provided the necessary documents regarding his claim. Ms. Doxtator inquired about the duty status report and appellant replied that his doctor did not have time to complete it.

A form for the request of unscheduled leave indicated that Dennis Tvoni, an employing establishment supervisor, took a telephone call from appellant on the morning of May 9, 2003 and noted a history of injury as provided by him, that he hurt his ankle when he came down hard on it the prior Tuesday and that his ankle did not hurt at that time. A note from an unknown author indicated that appellant did not mention any problem during a conversation and that he was in a good mood and walking normally on Wednesday. The note indicated that information was taken from appellant during a telephone conversation and entered into the employing establishment's website, but that the date of injury provided by appellant was not the same date provided to Mr. Tvoni that morning.

The May 9, 2003 medical treatment notes of Dr. Vladislav Polyakov, a family practitioner, provided a history that two days prior, appellant was working on his route delivering mail when he tripped over a rock in a grass lawn and inverted his ankle.

In response to the Office's question regarding the discrepancy as to the date he sustained an injury, appellant stated that the evening supervisor correctly reported that his injury occurred on May 7, 2003. In a June 10, 2003 letter, appellant stated:

"I was delivering mail on May 7, 2003 when I lost my footing on a lawn overgrown with grass and twisted my right ankle. At the time, I did not notice significant pain and assumed I could 'walk off' the discomfort. When I woke up the following day (Thursday, May 8, [2003,] which happened to be my day off), my ankle was swollen and extremely painful, so much so that I could not walk on it."

Appellant explained that by doctor's orders he was unable to report to work on May 9, 2003, which was the day that he told his supervisor that he slipped on May 7, 2003, but felt no

significant pain until May 8, 2003. Appellant stated that this version was corroborated by the evening supervisor's statement on his Form CA-1.

Appellant submitted a statement from Dorothy Taylor, a customer, who stated:

“On May 7, 2003 while working in my garden [appellant] came and delivered my mail and mentioned that [he] had turned his ankle while delivering mail at my neighbor's house and we swapped stories of how such things happen and the pain it causes. I noticed that he was off for a couple of days afterwards because of the accident. I can attest to the fact that he had that injury while on the job.”

A May 9, 2003 disability certificate from Dr. Lowell R. Dightman, a Board-certified family practitioner, provided the date of injury as May 7, 2003, a diagnosis of right ankle sprain and that appellant was totally disabled for work through May 16, 2003. His May 9, 2003 duty status report also provided a history that appellant slipped while walking/delivering the mail on May 7, 2003 and that he suffered a right ankle sprain. Dr. Dightman's May 12, 2003 report revealed a history that appellant slipped on his right ankle and there was a hole in the lawn. Appellant came down on his ankle and it bent inward.

Although the employing establishment contended that it did not have any knowledge of appellant's injury on May 7, 2003 and that he provided an inconsistent history of the incident, the Board finds that the statements of appellant, Ms. Taylor and Dr. Dightman's reports provide a consistent history of incident and establish that appellant received medical treatment for his ankle injury contemporaneous to the May 7, 2003 incident. Accordingly, the Board finds that the evidence of record supports that the incident occurred at the time, place and in the manner alleged.⁹

The Board, however, finds that the medical evidence of record fails to establish that appellant sustained an ankle injury due to the May 7, 2003 employment incident. Although Dr. Dightman's May 9, 2003 disability certificate provided a diagnosis of a right ankle sprain and found that appellant was totally disabled for work through May 16, 2003, it failed to address whether or how his condition was caused by the May 7, 2003 employment incident.¹⁰ Similarly, Dr. Dightman's May 9, 2003 duty status report and May 12, 2003 report providing a history of the May 7, 2003 employment incident and a diagnosis of right ankle sprain failed to address whether or how appellant's condition was caused by the accepted employment incident.

Dr. Polyakov's May 9, 2003 treatment notes revealed a history of the May 7, 2003 employment incident as noted above and his findings on physical examination. He stated that appellant had a right ankle sprain involving fibulocalcaneal and fibulocalus ligaments. Dr. Polyakov suspected a second-degree sprain, but not a fracture. He further stated that since appellant was able to ambulate immediately after the injury he was reassured that he was not likely dealing with a fracture or a third-degree sprain. Dr. Polyakov's report did not address

⁹ *Louise F. Garnett*, 47 ECAB 639, 643-44 (1996); *Constance G. Patterson*, 41 ECAB 206 (1989); *Julie B. Hawkins*, 38 ECAB 393 (1987).

¹⁰ *Daniel Deparini*, 44 ECAB 657, 659 (1993).

whether or how appellant's ankle condition was caused by the May 7, 2003 employment incident.

Although the Office advised appellant of the type of medical evidence needed to establish his claim, he failed to submit medical evidence responsive to the request. Consequently, appellant has not established that his right ankle injury was caused by the May 7, 2003 employment incident.

The June 30, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
October 23, 2003

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member