United States Department of Labor
Employees' Compensation Appeals Board

DONNA M. DESROBERTS, Appellant	)	
and	)	**Docket No. 04-94**
	)	**Issued: April 9, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Portland, ME, Employer	)	

Appearances:
Donna M. DesRoberts, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 6, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated September 18, 2003, which denied her claim for failure to establish fact of injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on July 27, 2003.

FACTUAL HISTORY

On July 31, 2003 appellant, then a 44-year-old breakdown clerk, filed a notice of traumatic injury (Form CA-1) alleging that on July 27, 2003 the U-carts were jammed so she put her foot on the bottom bar for leverage, her foot slipped and she caught her toenail in the seam of her shoe, hurting her great toe. Appellant stopped work on July 27, 2003 and was treated at Sebasticook Valley Hospital the same day for a toe bruise, subungual hematoma. She returned to work on July 31, 2003. Accompanying appellant's claim were July 27, 2003 discharge

instructions from Sebasticook Valley Hospital, which noted a bruise/toenail (unreadable) and a July 31, 2003 Form CA-17 from Dr. Samuel McCarthy, an emergency room physician, which advised appellant was seen on July 27, 2003 when her "foot slipped off rung of U-cart while trying to pull apart -- toenail caught on seam in shoe." A great toe bruise and subungual hematoma were diagnosed. Appellant was advised to return to work on July 29, 2003.

By letter dated August 1, 2003, the employing establishment controverted the claim, challenging the methodology by which the incident occurred.

By letter dated August 11, 2003, the Office advised appellant that additional factual and medical information was needed. Appellant was requested to state which toe was injured (left or right) and to have her attending physician submit a detailed, narrative medical report, which included a history of the injury and all prior industrial and nonindustrial injuries to similar parts of her body along with a detailed description of any findings, the results of all x-rays and laboratory tests, a diagnosis of any condition resulting from this injury and course of treatment followed and a physician's opinion supported by a medical explanation as to how the reported work incident caused the claimed injury. The Office explained that the physician's opinion was crucial to her claim and allotted appellant 30 days, within which to submit the requested information.

Appellant provided the July 27, 2003 emergency room notes from Dr. McCarthy, which noted that appellant was trying to manipulate some kind of shelving device and ended up bruising her toe. Examination of the right great toe showed a subungual hematoma and bruising extending to the pad of the toe. A subungual hematoma release was done with electrocautery with good results. Appellant was given ibuprofen and a work note for the night and told to continue with ibuprofen and ice. A toe bruise, subungual hematoma were diagnosed.

By decision dated September 18, 2003, the Office denied appellant's claim, finding that an injury within the meaning of the Federal Employees' Compensation Act was not demonstrated as there were discrepancies in the description of the alleged events that occurred and appellant's physician based his diagnosis on the history she provided.

LEGAL PRECEDENT

An employee seeking benefits under the Act[1] 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 filed within the applicable time limitation 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

[1] 5 U.S.C. §§ 8101-8193.

[2] *Gary J. Watling*, 52 ECAB 278 (2001); *Leslie C. Moore*, 52 ECAB 132 (2000); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.[3]

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.[4] The second component 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 claimed, as well as any attendant disability and employment, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[5]

ANALYSIS

In this case, the Office found that the evidence was insufficient to establish that the event occurred as alleged as there were discrepancies in the description of the alleged events which occurred. The Office noted that appellant's description of how the injury occurred on the Form CA-1 differed from what she told her supervisor. The Office noted that the employing establishment stated that she had informed her supervisor that she really did not know how she had injured her great toe and, when they recreated the situation with several types of footwear, at no time did the footwear catch on anything. The employing establishment further indicated that although they had asked appellant to bring in the shoes she was wearing at the time of the alleged incident, she had not done so.

A review of the August 1, 2003 letter from the employing establishment reveals that the alleged injury had occurred on a Sunday during the performance of appellant's duty and Roland Mathieu, a coworker, had placed a call to Supervisor Mickey White at his home. Although appellant had advised Supervisor White that she did not know how she had injured herself, she had stated that she thought a U-cart was involved as they were nested tightly together. The Board has held that 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 or persuasive evidence.[6] The August 1, 2003 letter from the employing establishment establishes that the incident occurred during the performance of duty and involved the U-carts. The exact methodology of how appellant injured her right toe is a medical question for medical experts and does not negate the fact that an injury happened during the performance of appellant's duty. Moreover, appellant sought medical attention the same day and was consistent in noting the involvement of the U-carts. Accordingly, the Board finds, from the circumstances presented in

[3] *Michael E. Smith*, 50 ECAB 313 (1999)*; Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Elaine Pendleton, supra* note 2.

[5] *See* 20 C.F.R. § 10.115(e); *Gary Fowler*, 45 ECAB 365, 371 (1994).

[6] *Linda S. Christian*, 46 ECAB 598 (1995).

this case, that the employment incident occurred as alleged by appellant on July 27, 2003 while unjamming U-carts.

The Board finds that the medical evidence of record reveals a medical condition of "great toe bruise and subungual hematoma which the physician attributed to the history of foot slipping off U-cart and catching in seam of shoe. In his July 31, 2003 form report, Dr. McCarthy stated "yes" to a box indicating that appellant's diagnosed conditions of great toe bruise/subungual hematoma were related to her July 27, 2003 injury. This diagnosis was made following appellant's trip to the hospital on the same day of the occurrence of the incident. There is no evidence to the contrary. Thus, the Board finds the record contains sufficient evidence to require further development by the Office in light of the fact that the injury occurred on a Sunday and the supervisor was not present, no CA-16 authorizing examination and treatment was issued and appellant was treated the same day.[7]

The Board also finds that the Office has not exercised its discretionary authority to determine whether appellant's medical expenses are reimbursable.

The Board has previously held that, even though a claimant is not entitled to reimbursement of medical expenses which are not authorized by the Office as a matter of right, the Office nevertheless has the discretion to approve unauthorized medical care pursuant to section 8103 of the Act.[8]

Authorization and reimbursement of medical expenses are addressed by 20 C.F.R. §§ 10.300 and 10.304 which provide in pertinent part:

> "When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment or both, the employer shall authorize such examination and/or treatment by issuing a Form CA-16.[9]
>
> "In cases involving emergencies or unusual circumstances, [the Office] may authorize treatment in a manner other than as stated in this subpart."[10]

The Office is required to exercise its discretion to determine whether medical care has been authorized or whether unauthorized medical care involved emergency or unusual circumstances and is, therefore, reimbursable regardless of whether the underlying claim for benefits has been accepted or denied.[11] On remand, the Office shall exercise its discretion to determine whether appellant's medical expenses are reimbursable as involving an emergency or unusual circumstance because appellant was treated at a local hospital on the same day as the injury and was not issued a Form CA-16 within four hours authorizing such examination and

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

[8] 5 U.S.C. § 8103; *see also Michael L. Malone*, 46 ECAB 957 (1995); *Marjorie S. Geer*, 39 ECAB 1099 (1988).

[9] 20 C.F.R. § 10.300.

[10] 20 C.F.R. § 10.304.

[11] *Michael L. Malone*, *supra* note 8; *Herbert J. Hazard*, 40 ECAB 973 (1989).

treatment. The Office shall thereafter, issue a *de novo* decision regarding reimbursement/ payment of this medical expense.

CONCLUSION

The Board finds that appellant has not established that her right toe condition is causally related to factors of her federal employment. However, the decision is set aside for further development regarding reimbursement of medical expenses.

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2003 decision of the Office of Workers' Compensation Programs is affirmed as modified to reflect that appellant had not submitted sufficient medical evidence to establish that she sustained an injury in the performance of duty. The decision, however, is set aside for further development regarding reimbursement of medical expenses.

Issued: April 9, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member