United States Department of Labor
Employees' Compensation Appeals Board

WINFRED L. WORLDS, Appellant	)	
and	)	**Docket No. 04-906**
	)	**Issued: August 5, 2004**
U.S. POSTAL SERVICE, CLEVELAND STATION, Clearwater, FL, Employer	)	

Appearances:
Winfred L. Worlds, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On February 23, 2004 appellant timely filed an appeal from a November 13, 2003 decision by the Office of Workers' Compensation Programs who found that appellant had not established that he sustained an injury at work. The Board has jurisdiction over the merits of this case pursuant to 20 C.F.R. §§ 501.2(c) and 501.3.

ISSUE

The issue is whether appellant established that he sustained an employment injury on August 21, 2003 as he alleged.

FACTUAL HISTORY

On September 19, 2003 appellant, then a 37-year-old letter carrier, filed a claim for compensation for an August 21, 2003 incident in which he claimed that he had sustained a cervical disc herniation. In a September 19, 2003 statement, appellant's supervisor, Linda Price, reported that appellant had submitted a claim that day indicating that he had been injured on August 21, 2003 at 2:10 p.m. at 1118 Engman Street. She noted that, in prior conversations,

appellant had stated that the incident had occurred on Lasalle Street. Appellant indicated that he was driving on Engman Street when he noticed a drug transaction taking place. He reported that suddenly a van involved in the transaction took off and came in front of his vehicle. Appellant told Ms. Price that he had to slam on his brakes and his body jerked forward. He explained that he had not reported the incident previously because there had not been an accident and there was nothing to report. Ms. Price pointed out that appellant had made a delivery at 2:17 p.m. and suggested that appellant could not have been at the site of the incident at the time he claimed because he would have made 77 deliveries in 7 minutes to reach the site of the incident at the time he reported. In a September 25, 2003 statement, Ms. Price stated that appellant had worked one day after August 26, 2003. She related that appellant initially stated that his physician was indicating his neck and back condition could have been aggravated by his job. On September 16, 2003 appellant informed Ms. Price that in the past three to four weeks he had an incident on Lasalle Street where a drug deal was occurring and he had to slam on his brakes while delivering on the route. He commented that this incident may have caused his problem. Ms. Price indicated that on September 18, 2003 appellant had come to the employing establishment for other business. He told her at that time that he had slammed on his brakes while he had his seat belt on and was jerked forward. Appellant noted that his physician had asked if he had any trauma in the past three to four weeks. Appellant related that the incident he had described was the only incident that came to mind. He stated that he had not reported the incident at the time because he thought nothing of the incident and had nothing to report at that time.

In an October 2, 2003 report, the Office requested that appellant submit additional factual and medical information to support his claim. Appellant submitted a September 3, 2003 report from Dr. Charles W. Hirt, a radiologist, that a magnetic resonance imaging (MRI) scan showed a subtle central disc protrusion at C5-6 and a suggested cervical muscle spasm. Appellant also submitted three reports from Dr. Ricky P. Lockett, an osteopath. In a September 12, 2003 report, Dr. Lockett diagnosed cervical disc herniation, upper trapezius strain, thoracic strain and temporomandibular joint (TMJ) dysfunction. He indicated that appellant gave a history that, while driving at work, he had come to a sudden stop to avoid striking another vehicle. Appellant remembered that he was jerked forward and backward. Since that time he had a slow onset of neck pain. In a September 22, 2003 report, Dr. Lockett diagnosed cervical disc herniation, upper trapezius strain and thoracic strain. He stated that appellant had tenderness and muscle guarding of the cervical paraspinal musculature bilaterally with tenderness in the middle of the cervical region and multiple trigger points. He made similar findings in his examination of the upper trapezius muscle and the thoracic paraspinal musculature. In an October 10, 2003 report, Dr. Lockett added that appellant had tenderness and guarding over the lumbar paraspinal musculature and tenderness over the temporalis and masseter muscles as well. He diagnosed cervical disc herniation, TMJ dysfunction, upper trapezius strain, thoracic strain and myofascial pain syndrome.

In an October 27, 2003 statement, appellant indicated that he began to get pain in his lower back and headaches on August 24, 2003. He reported to work on August 26, 2003 but informed his supervisor that he was unable to finish his work for that day. Appellant underwent the MRI scan and received physical therapy afterwards. He saw a specialist for a second opinion. The specialist asked if there had been any jerking or sudden stops or a car accident. Appellant remembered the braking incident. He had not reported it at the time because he was not hurt and had not hurt anyone. Appellant stated that at the time he reported the incident he

gave his best estimate of the time of the incident. He indicated that, prior to scanning the accountable mail at 2:17 p.m., he had traveled to Engman Street to pick up a soft drink. Appellant noted as he drove down the street, he saw a truck facing him. The truck suddenly sped off across the street to make an escape. Appellant stopped suddenly to avoid an accident. When he hit his brakes, he jerked forward but was stopped by his seat belt. He proceeded on his way after stopping for a minute to recover. Appellant had witnessed drug activity previously in the area so he thought it was not a big deal.

In a November 13, 2003 decision, the Office pointed out discrepancies in appellant's account of the incident. It also noted that he had not submitted medical records to substantiate his medical condition which he claimed was related to his employment. The Office denied appellant's claim because he had not met the requirements for establishing that he sustained an injury as defined by the Federal Employees' Compensation Act.

LEGAL PRECEDENT

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[1] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[2] An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.[3] A claimant seeking benefits under the Act[4] has the burden of establishing by reliable, probative, and substantial evidence that any disability for work or specific condition for which compensation in claimed is causally related to the employment injury.[5] To establish causal relationship between a condition, including any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[6] Neither the fact that the condition manifests itself during a period of federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.[7]

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

[2] *Id*. For a definition of the term "injury," *see* 20 C.F.R. § 10.5(a)(14).

[3] As used in the Act, the term "disability" means incapacity because of an injury in employment to earn wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity. *See Frazier V. Nichol*, 37 ECAB 528 (1986).

[4] 5 U.S.C. § 8101-8193.

[5] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *Daniel M. Ibarra*, 48 ECAB 218, 219 (1996).

[7] 20 C.F.R. § 10.115(e).

ANALYSIS

The employing establishment stated that there were several discrepancies in appellant's account of the August 21, 2003 incident, particularly on the time of the incident and the location of the incident. The employing establishment also noted that appellant took approximately a month to report the incident. Appellant, however, gave a consistent account that, on August 21, 2003, he had to brake suddenly to avoid hitting a truck or van that sped away from what appellant thought to be a drug transaction. He repeatedly stated that the braking caused him to be jerked forward. Appellant gave a reasonable explanation for not reporting the incident earlier, stating that he had no pain at the time of the incident. The pain developed three days later. However, appellant did not associate the pain with the August 21, 2003 incident until a physician asked him on September 12, 2003 whether he had been jerked forward while driving. Appellant mentioned the incident to his supervisor on September 16, 2003 and filed his claim one week after he associated the August 21, 2003 incident with his neck and back pain. His supervisor contended that appellant had made an accountable delivery at 2:07 p.m. and therefore could not have made 77 stops in 7 minutes to reach the site of the incident. Appellant stated, and the record shows, that appellant made the accountable stop at 2:17 p.m., 7 minutes after the incident. He explained that he had driven to the area to get a soft drink. Appellant has given a consistent account of the August 21, 2003 incident and has given a reasonable explanation for his delay in filing the claim in light of the supervisor's contention concerning the time of appellant's accountable delivery. The Board therefore finds that appellant was injured at the time, place and in the manner alleged.

Appellant, however, did not submit sufficient medical evidence to establish that the incident caused his injuries of a protruding C5-6 disc, myofascial pain syndrome, TMJ dysfunction and various muscle strains. The MRI scan report only gave a diagnosis, not an explanation, of what caused the protruding cervical disc. Dr. Lockett gave a history that was consistent with the history appellant gave when he filed his claim, described his findings in his examinations of appellant and gave a diagnosis of his conditions. Dr. Lockett, however, failed to give any detailed explanation on how the August 21, 2003 employment injury would have caused the conditions he diagnosed. Dr. Lockett's reports, therefore, have limited probative value and are insufficient to meet appellant's burden of proof in establishing that his condition was causally related to the August 21, 2003 employment injury.

CONCLUSION

Appellant was injured at the time, place and in the manner alleged. However, appellant did not meet his burden of proof in establishing a causal relationship between his employment injury and the conditions diagnosed by Dr. Lockett.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs, dated November 13, 2003, be affirmed as modified.

Issued: August 5, 2004
Washington, DC

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member