United States Department of Labor
Employees' Compensation Appeals Board

DENNIS J. SATCHELL, Appellant	)	
and	)	**Docket No. 04-571**
	)	**Issued: May 7, 2004**
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer	)	

Appearances:
Dennis J. Satchell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On January 6, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated December 10, 2003 which denied his 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 has established that he sustained a back injury on September 15, 2003 in the performance of duty.

FACTUAL HISTORY

On September 22, 2003 appellant, then a 35-year-old letter carrier, filed a traumatic injury claim alleging that, on September 15, 2003, as he was delivering mail, he bent down to put mail under a door and felt sharp lower back pain when he tried to get up. The employing establishment controverted appellant's claim indicating that he was not at work on September 15, 2003.

By letter to appellant dated October 8, 2003, the Office advised that it needed further information before it could make a determination of his claim. Appellant submitted an undated report from a chiropractor, Dr. Patrick Nierva, who stated that appellant "has been receiving chiropractic treatment at my office since September 15, 2003. His current treatment regimen remains at [two times] per week."

In response to the Office's questions related to him not being on duty on September 15, 2003, appellant replied on October 13, 2003 that he did not remember the exact date the injury occurred, that he was not good with dates, but that he knew he was at work when the injury occurred. Appellant stated that he did not immediately notify his supervisor because his supervisor was away, and that he tried to work following the incident. He stated:

> "I went to my doctor on September 12, 2003 to see if he would be able to help me and he told me that I needed to see a chiropractor and I started to see him on September 15, 2003 and it seems it wasn't working, th[e]n my doctor referred [me to] a neurologist [for] severe pain in my lower back and sharp pains in my buttocks."

Appellant claimed that he had had a previous work-related back injury in 1999, but that he did not remember the exact date, and that he had been diagnosed with a herniated L3 disc and a bulging disc by magnetic resonance imaging (MRI) scan.

Appellant submitted an October 22, 2003 Form CA-20, attending physician's report, from Dr. Mira Sherer, a Board-certified neurologist, who noted the date of injury as September 15, 2003. Dr. Sherer diagnosed low back pain with radicular pain.

Another Form CA-20, attending physician's report, was submitted from Dr. Ranga C. Krishna, a Board-certified neurologist, who noted the date of injury as September 15, 2003, noted the history of injury as "delivering mail," and diagnosed "lumbosacral disc [and] radiculopathy."

Appellant also submitted a Form CA-7 claim for compensation noting the date of injury as September 15, 2003, and that he stopped work on September 18, 2003 returned on September 19, 2003 but stopped again on September 22, 2003. The employing establishment advised that appellant was not in the performance of duty on September 15, 2003, the date of the alleged injury.

By decision dated December 10, 2003, the Office rejected appellant's claim finding that the information submitted was insufficient to establish fact of injury. The Office found that the date given for the injury was not a day on which appellant was at work, and that he could not have been injured in the performance of duty on that date, as alleged.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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 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.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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 at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[4] This component can be established by an employee's uncontroverted statement on the Form CA-1.[5] A consistent and accurate history of the injury as reported on medical records, to the claimant's supervisor, and on the notice of injury can also be evidence of the occurrence of the incident.[6]

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[4] *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). *See also George W. Glavis*, 5 ECAB 363 (1953) For a detailed discussion of the components of an appellant's burden of proof in establishing fact of injury *see Elaine Pendleton*, 40 ECAB 1143 (1989).

[5] *Id.*

[6] *See Caroline Thomas*, 51 ECAB 451 (2000).

The second component is whether the employment incident caused a personal injury and can generally be established only by medical evidence.[7] To establish a causal relationship between the condition and 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.[8]

ANALYSIS

Appellant alleged that he sustained an injury on September 15, 2003. The employing establishment advised that he was not in the performance of duty on that date. In response to an Office inquiry as to the date of injury, he stated that on September 12, 2003 he went to see his doctor who recommended that he see a chiropractor, which he did on September 15, 2003. This first medical consultation was three days prior to the date of the alleged injury. This evidence controverts that he sustained injury on September 15, 2003 as he acknowledged having low back pain on September 12, 2003. The Board notes that all of the medical reports of record identify the date of injury as September 15, 2003, a date the employing establishment confirmed that appellant was not on duty. The Board finds that there are such inconsistencies of record that appellant has not established that he was injured in the performance of duty at the time, place and in the manner alleged.

As appellant failed to establish that he sustained a traumatic incident on September 15, 2003 as alleged, the Board need not consider the medical evidence of record.[9]

CONCLUSION

Appellant has not met his burden of proof to demonstrate that he was injured in the performance of duty on September 15, 2003 as alleged.

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

[8] *See Gloria J. McPherson*, 51 ECAB 441 (2000).

[9] Upon appeal, appellant provides further information regarding his date of injury. As this evidence was not before the Office at the time of its most recent decision, it may not now be considered for the first time by the Board on appeal. *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 10, 2003 must be and hereby is affirmed.

Issued: May 7, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member