United States Department of Labor
Employees' Compensation Appeals Board

JARED C. SMITH, Appellant	)	
and	)	**Docket No. 04-1401**
	)	**Issued: September 21, 2004**
U.S. POSTAL SERVICE, SHARED SERVICE CENTER, Pittsburgh, PA, Employer	)	

Appearances:
Jared C. Smith, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member

JURISDICTION

On April 29, 2004 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated April 12, 2004 which denied his claim on the grounds that he had not established fact of injury. Under 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 met his burden to establish that he sustained an injury in the performance of duty on January 22, 2004.

FACTUAL HISTORY

On February 16, 2004 appellant, a 19-year-old casual carrier, filed a claim for benefits, alleging that he injured his right shoulder on January 22, 2004 when he slipped on a patch of ice and fell to the ground. The employing establishment controverted the claim on the Form CA-1, contending that appellant initially stated that he fell on February 5, 2004, at which time he

declined a request to obtain medical treatment for his alleged injury. The employing establishment also noted that there were no witnesses to the alleged incident. In addition, the employing establishment attached a handwritten statement to the Form CA-1 in which it asserted that, on January 22, 2004, appellant had been accompanied during the final two hours of his route by a supervisor, who had ordered him not to deliver mail at the address where appellant alleged the incident occurred, the intersection of 3131 Thornton and 3105 Rodney.[1]

By letter dated March 5, 2004, the Office advised appellant that he needed to submit additional information in support of his claim. The Office requested that he submit additional medical evidence in support of his claim and provide factual evidence, including statements from witnesses, which would corroborate his account of the events which occurred on January 22, 2004. The Office stated that appellant had 30 days to submit the requested information. Appellant did not respond to this request within 30 days.

By decision dated April 12, 2004, the Office denied appellant's claim, finding that he failed to establish fact of injury. The Office found that the evidence appellant submitted was insufficient to establish that the event occurred as alleged. The Office also found that appellant failed to submit medical evidence containing a diagnosis which could be connected to the claimed event. The Office stated that it had requested additional factual and medical evidence by letter dated March 5, 2004, but that appellant had failed to respond to this request.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that 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.[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

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. 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.[5] An

[1] The employing establishment stated that the supervisor ordered appellant not to go to this location because "it was apparent to both parties [appellant and his supervisor] that the customer did not care about the wellbeing of our carriers."

[2] 5 U.S.C. § 8101 *et seq*.

[3] *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[6]

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.[7] The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

ANALYSIS

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged. Although appellant alleged in his CA-1 form that he injured his right shoulder on January 22, 2004, this statement was refuted by the employing establishment's assertion that he initially alleged to have experienced the slip and fall incident on February 5, 2004, at which time he declined management's offer to provide medical treatment. Further, the employing establishment asserted in its statement attached to the Form CA-1 that appellant had been accompanied by a supervisor on January 22, 2004 -- the alleged date of injury -- for the final two hours of his route, and had been instructed to avoid delivering mail at the address where appellant alleged the incident occurred, the intersection of 3131 Thornton and 3105 Rodney.[9] This contradictory evidence created an uncertainty as to the time, place and in the manner in which appellant sustained his alleged lower back injury.

In addition, appellant failed to submit to the Office a corroborating witness statement in response to the Office's request. This casts additional doubt on appellant's assertion that he injured his right shoulder when he slipped and fell on January 22, 2004. The Office requested that

[6] *Joseph Albert Fournier*, 35 ECAB 1175 (1984).

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

[8] *Id*.

[9] The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

appellant submit additional factual and medical evidence explaining how he injured his right shoulder on the date in question, in support of his claim that his right shoulder pain was related to the alleged work incident of January 22, 2004. Appellant failed to submit such evidence. Finally, there is no indication in the record before the Board that appellant sought medical treatment for an alleged shoulder injury. The circumstances of this case therefore cast serious doubt upon the occurrence of a January 22, 2004 injury in the manner alleged by appellant. Accordingly, given the inconsistencies in the evidence regarding how appellant sustained his injury, the Board finds that there is insufficient evidence to establish that appellant sustained an injury in the performance of duty as alleged.[10]

CONCLUSION

The Board finds that appellant has not met his burden to establish that he sustained an injury in the performance of duty on January 22, 2004 as alleged.[11]

ORDER

IT IS HEREBY ORDERED THAT the April 12, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 21, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[10] *See Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

[11] The Board notes that appellant submitted additional evidence to the record following the April 12, 2004 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501.2(c).