

**United States Department of Labor
Employees' Compensation Appeals Board**

ANTHONY T. DARDEN, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Pikesville, MD, Employer**

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**Docket No. 05-151
Issued: April 7, 2005**

Appearances:
Anthony T. Darden, 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
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On October 19, 2004 appellant filed a timely appeal of a July 13, 2004 decision of an Office of Workers' Compensation Programs' hearing representative, affirming a June 23, 2003 decision denying his claim for compensation. 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 established an injury in the performance of duty on April 3, 2003.

FACTUAL HISTORY

On April 24, 2003 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a spider bite injury on April 3, 2003. The record indicates that on April 3, 2003 he received treatment at a hospital emergency room, with complaints of left hand pain and swelling, with low back and knee pain. On April 6, 2003 appellant again received treatment at the emergency room for continued left hand swelling and

pain under the left arm. The diagnosis stated left hand swelling, gout vs. cellulitis. Appellant's supervisor reported that on April 4, 2003 appellant indicated that he was unable to work due to gout and he had been advised to reduce his red meat intake.

In a hospital report dated April 14, 2003, Dr. Surinderpal Sodhi reported that appellant was admitted on April 12, 2003 with left hand swelling and appellant indicated that he may have been bit on the left hand. Dr. Sodhi diagnosed left hand abscess probably due to insect bite and stated that appellant needed surgical drainage. A hospital report dated April 17, 2003 indicated that surgery was performed, he was treated with antibiotics and was to be discharged April 18, 2003.

In an attending physician's report (Form CA-20) dated June 17, 2003, Dr. Thomas Gillespie, an orthopedic surgeon, provided a history of left hand swelling starting April 3, 2003 after receiving a bug bite. Dr. Gillespie diagnosed collarbutton abscess of the left hand and he checked a box "yes" as to causal relationship with employment, noting that appellant reported getting mail out of a mailbox.

In response to an inquiry from the Office, appellant stated that on April 3, 2003 he left work at 7:00 p.m. and while he was driving home he began to have tingling and swelling in the left hand. He indicated that he was removing mail out of collection boxes while wearing thin cotton gloves and he did not notice that he had been bitten. Appellant stated that he began to have back discomfort and left arm numbness and he went to the emergency room on the night of April 3, 2003.

By decision dated June 23, 2003, the Office denied the claim on the grounds that the evidence was insufficient to establish that an insect bite occurred on the job. Appellant requested a hearing, which was held on April 20, 2004. He stated that he began feeling a tingling in the left hand within two to three minutes of getting into his car after leaving work on April 3, 2003. Appellant noted that the gloves he wore had rubber on the palms but the back of the gloves were cotton. He stated that he often found spiders or insects in the mailboxes, but it was dark as he was finishing his job and he did not see a spider or insect and did not have any specific recollection of being bitten. Appellant thought he was probably bitten near the end of his route.

Appellant submitted a report dated February 23, 2004 from Dr. Jeffrey D. Gaber, an internist, who provided a history, noting that appellant underwent plastic surgery on his left hand on February 20, 2004. He stated that appellant was required to wear gloves when reaching into mailboxes, which commonly housed spiders and insects; he stated that appellant's treating physician reported a diagnosis of an insect or spider bite causing cellulitis changes and abscess in the left hand. Dr. Gaber opined that, within a reasonable degree of medical certainty, the problems with the left hand were due to an insect bite. He stated that it was certainly probable that an insect bite could penetrate cotton gloves and the close proximity of time between the end of the workday and the onset of symptoms supported the association with employment.

By decision dated July 13, 2004, the hearing representative affirmed the June 23, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 or specific condition for which compensation is claimed is causally related to the employment injury.²

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.³ An injury does not have to be confirmed by eyewitnesses to establish that an 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.⁴ It is well established that a claimant cannot establish fact of injury if there are 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.⁵ 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁶ However, 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.⁷

ANALYSIS

The question presented is whether the evidence establishes the alleged incident, in this case a spider or insect bite occurred in the performance of duty on April 3, 2003. In an alleged insect bite case the Board has looked carefully at the circumstances of the case, including the medical evidence to determine if it is consistent with an insect bite at work. In *Linda Christian*,⁸ the employee felt a bite on her thigh at work but did not seek treatment for five days as she did not realize the seriousness of the injury. She did not see an insect or spider, nor did she initially report the incident to a supervisor. The Board found that appellant's claim was consistent with

¹ 5 U.S.C. §§ 8101-8193.

² *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁴ *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

⁵ *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

⁶ *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

⁷ *Id.*

⁸ 46 ECAB 598 (1995).

the facts of her case and her subsequent course of action and, therefore, an injury in the performance of duty was established. In *Doyle W. Ricketts*,⁹ the employee stated that on June 23, 1993 at work he felt soreness with a stinging sensation in his left heel and a small lump; he did not see an insect or spider. Appellant eventually saw his physician on August 23, 1993 and was diagnosed with a spider bite and infection. The Board found that his claim was consistent with the facts of the case and his subsequent course of action, noting that when a condition of employment puts the claimant in a position to be injured by a neutral risk, it is compensable.¹⁰

In the present case the Board also finds that appellant's claim of an insect or spider bite is consistent with the facts and his subsequent course of action. He reported left hand symptoms within two or three minutes after leaving work on April 3, 2003 and received medical treatment a few hours later. Appellant reported an injury the following day, referring to the condition as gout because that apparently was the initial emergency room diagnosis. Although he did not feel an actual bite, the above cases indicate that the failure to identify the precise mechanism or the exact identity of the offending creature is not fatal to the claim. The circumstances of the case show that appellant was reaching in mailboxes and by the end of his shift it was dark. The swelling of his left hand continued and on April 12, 2003 he underwent surgery with a hospital diagnosis of a probable insect bite. Dr. Gillespie indicated in his June 17, 2003 report, that appellant sustained a bug bite and supported causal relationship with employment on April 3, 2003. Dr. Gaber reviewed the factual and medical evidence and noted the close proximity in time of symptoms to the work activities, opining that appellant sustained an insect bite at work.

The evidence of record is, therefore, consistent with an insect or spider bite while in the performance of duty on April 3, 2003. The preponderance of the reliable evidence in this case is sufficient to establish an employment injury from a spider or other insect bite. The case accordingly will be remanded to the Office for an evaluation as to medical benefits and wage-loss compensation for periods of disability claimed.

CONCLUSION

The Board finds that appellant met his burden of proof to establish a spider or insect bite in the performance of duty on April 3, 2003.

⁹ 48 ECAB 167 (1996).

¹⁰ The Board noted that a neutral risk is a risk that is not distinctly associated with the employment or personal to the claimant. See also A. Larson, *The Law of Workers' Compensation* §§ 7.00-7.04 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 13, 2004 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: April 7, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member