

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

ARTHUR WALKER, Appellant)
and) Docket No. 04-1676
U.S. POSTAL SERVICE, POST OFFICE,) Issued: December 8, 2005
Coppell, TX, Employer)

Appearances:

Case Submitted on the Record

Arthur Walker, pro se

Miriam D. Ozur, for the Director

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
WILLIE T.C. THOMAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 22, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated December 29, 2003, February 6 and March 29, 2004 which denied his claim for a traumatic injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue on appeal is whether appellant has met his burden of proof in establishing that he sustained a left arm, knee, shoulder and cervical injury in the performance of duty.

FACTUAL HISTORY

On November 14, 2003 appellant, a 56-year-old letter carrier, filed a traumatic injury claim alleging that on April 12, 2003 he was delivering mail and fell from a porch and onto a

concrete walkway injuring his left arm, knee and wrist. The claim form indicated that appellant was not working when he filed the claim due to another employment-related injury.¹

In a letter dated November 26, 2003, the Office advised appellant of the type of factual evidence needed to establish his claim and requested that he submit such evidence.

In support of his claim, appellant submitted a statement dated December 1, 2003 and advised that, after he sustained the fall, he completed his route and reported the injury to his supervisor. He advised that two weeks after his injury he experienced dizziness and severe left shoulder pain and numbness.

In a decision dated December 29, 2003, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on April 12, 2003.

In an undated statement received January 5, 2004, appellant requested reconsideration and submitted additional medical evidence. Appellant reiterated the facts surrounding his injury and advised that after completing his route he notified his supervisor of his injury.

Appellant also submitted a December 2, 2003 report from Dr. Dan Naberhaus, a Board-certified family practitioner, who noted treating appellant for injuries to his left arm and shoulder sustained on April 12, 2003 after he fell from a porch when delivering mail. He noted that appellant presented with an abrasion to his left knee, left arm pain, neck pain and a headache but did not miss any work. Dr. Naberhaus advised that on April 27, 2003 appellant underwent an annual physical examination in which the abrasion on the left knee was still evident. He advised that appellant experienced dizziness, left arm and shoulder pain and a near syncope episode in May 2003 and remained off work until June 3, 2003. Appellant experienced subsequent episodes of dizziness and underwent a neurological and cardiac work up which revealed bilateral carpal tunnel syndrome and multiple levels of cervical spine degeneration. He underwent bilateral carpal tunnel releases on July 17 and August 5, 2003. On September 17, 2003 appellant underwent a C5-6 cervical fusion. Dr. Naberhaus opined that the resulting disabilities and need for a cervical fusion were related to appellant's fall on April 12, 2003.

By decision dated February 6, 2004, the Office denied modification of the December 29, 2003 decision.

On February 27, 2004 appellant requested reconsideration and submitted a magnetic resonance imaging (MRI) scan of the brain dated June 6, 2003 which revealed no abnormalities. A cervical spine MRI scan dated June 21, 2003 revealed various levels of bulging and narrowing from C3-4 to C6-7. An electromyography (EMG) dated June 26, 2003 revealed bilateral moderate carpal tunnel syndrome. In a June 26, 2003 report, Dr. Krishnababu Chunduri, a Board-certified psychiatrist and neurologist, noted performing an EMG and reported that

¹ On August 20, 2003 appellant filed an occupational disease claim, file number A16-2062590. The Office accepted appellant's claim for bilateral carpal tunnel syndrome, tenosynovitis of the hand/wrist, cellulites, abscess of the upper arm/forearm, lateral epicondylitis and open wound. Appellant stopped work and received temporary total disability until his return to work on March 22, 2005. This claim is not before the Board on the present appeal.

appellant had dizziness and paresthesias in both arms beginning in May 2003. An August 1, 2003 CT scan of the spine revealed multilevel degenerative changes which were most prominent at C5-6. A myelogram of the cervical spine dated August 1, 2003 revealed mild degenerative changes of the lower cervical spine. In a July 29, 2003 report, Dr. Richard O. Hubbard, a Board-certified neurosurgeon, noted that appellant presented with dizziness and numbness in his left arm. He diagnosed cervical spondylosis and recommended traction. Dr. Hubbard's reports of August 12 to October 31, 2003 noted that appellant had continued left shoulder pain and recommended cervical fusion at C5-6. Dr. Hubbard performed an anterior cervical fusion at C5-6 and diagnosed cervical spondylosis. In reports dated October 2 and 31, 2003, Dr. Hubbard advised that appellant was healing properly.

An attending physician's report dated February 6, 2004, prepared by Dr. Naberhaus, noted that on April 12, 2003 appellant fell while delivering mail, injuring his left side. He diagnosed bilateral carpal tunnel syndrome/neuritis and intervertebral disc disorder with myelopathy. Dr. Naberhaus noted with a checkmark "yes" that this condition was caused or aggravated by an employment activity and noted that appellant was carrying a mail pouch across his neck and shoulder and caught himself from falling with his left hand and arm. Dr. Naberhaus found appellant totally disabled.

A February 22, 2004 report from Dr. R. Robert Ippolito, a Board-certified plastic surgeon, noted that appellant presented with significant neck pain with radicular symptoms to both upper extremities. He diagnosed mild disc bulges at C2-3, C3-4 and C6-7 with moderate central stenosis at C2-3, C3-4 and C6-7, at C3-4 a diffuse disc bulge with moderate central stenosis, and at C5-6 a diffuse posterior disc protrusion and herniation. Dr. Ippolito advised that appellant had severe cervical disc disease with osteoarthritis and nerve compression. He opined that appellant's work of repetitive activities involving the cervical spine "characterized by repetition, force, posture, association of all three factors and strength of association of these factors with temporal relationship" have "contributed significantly to the onset" of appellant's symptoms. Dr. Ippolito further opined that appellant's current musculoskeletal disorder was attributed exclusively to the workplace factors, noting that appellant carried a mailbag weighing 50 pounds around his neck for most of his working years.

By decision dated March 29, 2004, the Office denied modification of the February 6, 2004 decision.²

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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."³ These are the essential

² Appellant requested an oral argument before the Board which was scheduled for October 18, 2005. Appellant did not appear for the scheduled oral argument.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

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.⁵ In some traumatic injury cases this component can be established by an employee's uncontested statement on the Form CA-1.⁶ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and the circumstances and his subsequent course of action.⁷ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁸ 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.⁹ Although 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,¹⁰ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.¹¹

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, as well as 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.¹²

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *John J. Caralone*, 41 ECAB 354 (1989).

⁷ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁸ *Id.* at 255-56.

⁹ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

¹⁰ *Robert A. Gregory*, 40 ECAB 478 (1989).

¹¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

¹² See *Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

ANALYSIS

Appellant alleged that he injured his left arm, knee and wrist on April 12, 2003 when he fell from a porch while delivering mail. However, appellant did not stop work at the time of the alleged injury, but indicated that he finished his mail route. Once he did seek medical treatment, the initial treatment notes make no mention of an employment-related injury, rather the first mention of an injury on April 12, 2003 was in Dr. Naberhaus' note dated December 2, 2003, which was over seven months after the injury occurred. The Board notes with an injury as that alleged by appellant, where he slipped from a porch and fell head first onto a concrete walkway, it would be reasonable to expect medical treatment with histories reflecting such an event within a few days or weeks of the claimed injury. Additionally, appellant did not file a traumatic injury claim for over seven months following the alleged incident and did not explain his delay in filing the claim in view of the apparent severity of his claimed injury. Also, there was no witness to the alleged incident and appellant did not give any prior notice to his supervisor of the alleged injury prior to filing his claim on November 14, 2003. These circumstances of late notification, lack of confirmation and continuing to work without difficulty cast serious doubt on appellant's *prima facie* claim.

There is no contemporaneous medical evidence supporting that a specific incident occurred on April 12, 2003. The medical records most contemporaneous to the date of the alleged injury include a report from Dr. Chunduri dated June 26, 2003, which failed to mention the work-related incident on April 12, 2003. Rather, he noted that appellant presented with dizziness and paresthesias in both upper extremities commencing in May 2003 which relate to the occupational claim filed by appellant for bilateral carpal tunnel syndrome. Reports from Dr. Hubbard dated July 29 to October 31, 2003 also fail to mention the work-related incident on April 12, 2003 but note appellant's treatment for the unrelated conditions of bilateral carpal tunnel syndrome and cervical spondylosis. The first mention of an employment-related incident in a medical report is in Dr. Naberhaus' report dated December 2, 2003 which notes treating appellant for injuries to his left arm and shoulder sustained when he fell from a porch on April 12, 2003. This report is dated over seven months after the alleged accident it would be expected that an injury of this apparent magnitude would be mentioned in a treating physician's report more contemporaneous with the alleged injury. Dr. Naberhaus further noted that during appellant's physical examination on April 27, 2003 he observed abrasions on appellant's left knee; however, there was no treatment note in the record prior to December 2, 2003 which mentions the incident of April 12, 2003 nor is there any reasonable explanation by Dr. Naberhaus as to why such claimed injury would not have been reported sooner. No other medical reports from 2003 mention of any incident or injury sustained at work on April 12, 2003.

As appellant has not satisfied the first component of fact of injury, establishing that he actually experienced an employment incident on April 12, 2003, it is premature to examine the second component, whether the medical evidence establishes that an employment incident on April 12, 2003, caused a personal injury.

For these reasons, the Board finds that appellant has not established that the claimed incident occurred as alleged. Consequently, appellant has not met his burden of proof in establishing his claim.

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury on April 12, 2003 in the performance of duty, causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the March 29 and February 6, 2004 and December 29, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 8, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board