

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

ALFONSO R. TAPIA, Appellant)	
)	
and)	Docket No. 05-408
)	Issued: May 16, 2005
U.S. POSTAL SERVICE, POST OFFICE, Santa Clarita, CA, Employer)	
)	

Appearances:
Alfonso R. Tapia, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Member
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On December 6, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 5, 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 right leg injury in the performance of duty.

FACTUAL HISTORY

On September 6, 2003 appellant, then a 54-year-old maintenance mechanic, filed a traumatic injury claim alleging that, on that date, he experienced pulsating pain in his lower right leg. Appellant did not stop work.

In accompanying statements dated September 9 and 10, 2003, Glen Soshea, appellant's manager, controverted the claim noting that appellant failed to describe any particular trauma

experienced on September 6, 2003 or to complete question 13 which describes the cause of the injury. In a letter dated September 9, 2003, Mike Delos Reyes, appellant's supervisor, advised that on September 6, 2003 appellant reported that while working his right leg began to pulse with pain which was intermittent throughout the day. Appellant indicated that he was unsure of why the pain began.

By letter dated September 16, 2003, the Office noted that there was insufficient evidence to show that he experienced any employment incident in relation to the claimed injury. The Office noted that medical evidence did not establish a medical condition resulting from any employment incident on September 6, 2003. The Office asked appellant to clarify how his leg pain began and to submit a medical report from his treating physician containing a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to his claimed right leg injury.

Appellant came under the treatment of Dr. Jeffrey B. Nordella, an internist, who noted in a report dated September 8, 2003, that appellant was treated for intermittent right leg pain, which commenced on September 6, 2003. Appellant reported that while working on a "DBCS machine" his lower left leg started to pulse with pain. Dr. Nordella noted objective findings of edema of the right tibia and fibula from the ankle to knee and advised that tendon palpitations were warm to touch. He diagnosed a right leg muscle strain and advised that appellant was able to return to regular duty. In an after care note, appellant was diagnosed with right muscle strain and was released to full duty. In a permanent and stationary report dated September 8, 2003, Dr. Nordella reported the diagnosis and advised that appellant was permanent and stationary and could return to full work status.

In a decision dated October 21, 2003, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained an injury on September 6, 2003. The Office found that the evidence of file was insufficient to establish that appellant experienced a traumatic incident on September 6, 2003.

In a letter dated October 20, 2004, appellant requested reconsideration and submitted a diary of his pain from September 6 to 25, 2004. The diary noted the days on which he experienced pain at home and at work. It did not identify any specific employment activities alleged to have caused pain. Also submitted was a September 26, 2003 report, from Dr. James E. Tibone, a Board-certified orthopedic surgeon, who noted treating appellant for leg pain and opined that appellant's work had aggravated his back. He noted a normal physical examination and diagnosed nerve root irritation on the right causing right leg pain and a degenerative disc. The physician placed appellant off work for two weeks. Appellant was also treated by Dr. Jae Chon, a Board-certified orthopedic surgeon, who noted on December 1, 2003 that appellant experienced pain in the right shin area while at work on September 6, 2003. He noted a normal physical examination and diagnosed right shin pain most likely from sciatica. The physician advised that appellant would be treated conservatively with physical therapy for two to four weeks.

In a decision dated November 5, 2004, the Office denied modification of the October 21, 2003 decision.

LEGAL PRECEDENT

An employee seeking benefits under the 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 is causally related to the employment injury.”¹ 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.²

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.³ In some traumatic injury cases this component can be established by an employee’s uncontroverted statement on the Form CA-1.⁴ 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 circumstances and his subsequent course of action.⁵ 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.⁶ 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.⁷ 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,⁸ 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.⁹

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁶ *Id.* at 255, 256.

⁷ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

⁸ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

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.¹⁰

Traumatic injury means a wound or other condition of the body caused by external force, including stress or strain, which is identifiable as to time and place of occurrence. The injury must be caused by a specific event or incident or series of events or incidents within a single workday or work shift.¹¹

ANALYSIS

Appellant alleged that he injured his right leg on September 6, 2003 while at work. However, he did not identify any specific employment activity or incident as causing the claimed traumatic injury. As noted appellant's burden of proof includes that he experienced a specific employment incident which is alleged to have caused his claimed condition. Mr. Delos Reyes noted that on September 6, 2003 appellant reported that he was working on a machine and his right leg began to pulse with pain and appellant was unsure of why the pain began. The Board has held, however, that the fact that a condition manifests itself or worsens during a period of employment or that work activities produce symptoms revelatory of an underlying condition, does not raise an inference of a causal relationship with the employment.¹²

The medical evidence does not support that a traumatic incident occurred on September 6, 2003. Dr. Nordella's report dated September 8, 2003 noted, that appellant was treated for intermittent right leg pain, which began on September 6, 2003. Appellant reported to him that "while working on a DBCS machine my lower left leg started to pulse with pain." However, the doctor indicated that there was edema of the right leg. The report of Dr. Tibone addressed nerve root irritation as causing pain to the right leg. Dr. Chon noted pain in the right shin region which he attributed to sciatica. The medical reports do not provide a firm diagnosis of appellant's right leg condition or a history of any specific traumatic event as causing his medical condition.

As noted, the mere fact that work activities may produce symptoms of an underlying condition does not impact any relationship to the employment activities.

For these reasons, the Board finds that appellant has not established that a traumatic incident occurred at work on September 6, 2003 as alleged. Consequently, appellant has not met his burden of proof in establishing his claim.

¹⁰ See *Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

¹¹ *William Taylor*, 50 ECAB 234 (1999).

¹² See *Thomas L. Hogan*, 47 ECAB 323, 330 (1996).

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury on September 6, 2003 in the performance of duty causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the November 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2005
Washington, DC

Colleen Duffy Kiko
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member