United States Department of Labor
Employees' Compensation Appeals Board

P.O., Appellant	)	
and	)	**Docket No. 06-1768**
	)	**Issued: January 3, 2007**
U.S. POSTAL SERVICE, POST OFFICE, Marshall, MN, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 27, 2006 appellant filed a timely appeal of an April 11, 2006 merit decision of the Office of Workers' Compensation Programs. 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 an injury in the performance of duty on August 14, 1993.

FACTUAL HISTORY

The case was before the Board on a prior appeal. By decision dated August 30, 2004, the Board affirmed a February 12, 2004 Office decision finding that appellant's request for reconsideration was untimely and did not establish clear evidence of error in the denial of his claim.[1] The prior Board decision provided a history of the case which is incorporated in this

[1] Docket No. 04-1178 (issued August 30, 2004).

decision. To summarize, appellant filed a CA-1 form on January 10, 1996 for an injury on August 14, 1993. He stated that he caught his foot and fell off a loading dock, injuring his knee. The employing establishment indicated that on January 4, 1996 appellant's employment was terminated on October 30, 1993 and he had never reported the alleged injury to the employing establishment. On February 6, 1996 appellant submitted a copy of a letter dated September 5, 1993 describing a fall off the loading dock on August 14, 1993 and a fall on September 4, 1993. He alleged that he also sent a copy to the employing establishment injury compensation office. The employing establishment responded in a February 26, 1996 memorandum that the postmaster had not been notified of an employment injury and appellant stated that he injured his knee outside of employment. According to the employing establishment injury compensation office, they did not receive notification of injury until the claim was filed.

With respect to medical evidence, appellant submitted a September 14, 1995 report from Dr. Derryl Moon, a chiropractor, and a February 22, 1996 form report (CA-20) from Dr. Terry Seeman, an orthopedic surgeon, who provided a history of appellant falling off a loading dock at work. Dr. Seeman diagnosed moderate osteoarthritis medial joint line of the right knee and mild varus deformity with degenerative meniscal tear. He checked a box "yes" that the condition was employment related.

As noted above, the Board detailed the history of the case in its prior decision. On January 19, 2006 the Office received a request for reconsideration and additional evidence. The medical evidence included 2004 treatment notes from Dr. Robert Suga, an orthopedic surgeon.

By decision dated April 11, 2006, the Office reviewed the case on its merits. The Office found that the evidence was insufficient to establish an injury in the performance of duty on August 14, 1993.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] has the burden of establishing that he or she sustained an injury while in the performance of duty.[3] 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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[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

[2] 5 U.S.C. §§ 8101-8193.

[3] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[4] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

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 employee's statements in determining whether a *prima facie* case has been established.[6]

ANALYSIS

The Office did not accept that an incident occurred as alleged on August 14, 1993. In its prior decision, the Board reviewed the evidence regarding the alleged incident. Although the standard of review was clear evidence of error, the Board noted the limited probative value of witness statements, such as from Mr. Boklep, that were given years after the alleged incident and did not provide relevant specifics regarding the incident. A coworker, Valerie Downing, stated in February 1997 that appellant informed her by telephone of an injury on August 14, 1993, although she did not witness the alleged incident and did not provide additional relevant detail. The evidence of record reveals actions that are inconsistent with the occurrence of the alleged incident. Appellant did not, for example, seek medical treatment in a timely manner. The first medical report with a history of an August 13, 1993 incident is a September 14, 1995 chiropractor's report.[7] Appellant apparently was not treated by a physician under the Act for the alleged injury until February 1996, when he was seen by Dr. Seeman. With respect to notification of the injury, appellant submitted a copy of a September 5, 1993 letter, but there is no evidence that it was received by appellant's supervisors or the employing establishment. A supervisor reported only that appellant discussed an injury outside of employment. Appellant did not pursue a claim for an injury on August 14, 1993 until he submitted a claim form in December 1995 to the employing establishment.

Under these circumstances, the Board finds there are inconsistencies in the evidence that cast serious doubt as to whether an incident occurred as alleged. The Board finds the evidence is not sufficient to establish an incident in the manner alleged. It is also noted that, if appellant were to establish the occurrence of an employment incident, he would still need to submit probative medical evidence on causal relationship between a medical condition and the employment incident. In view of the delay in seeking treatment, it is particularly important to have a reasoned medical opinion on causal relationship. Appellant has not met his burden of proof in this case.

CONCLUSION

The evidence of record is not sufficient to establish that appellant sustained an injury in the performance of duty on August 14, 1993.

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

[6] *Edward W. Malaniak*, 51 ECAB 279, 280 (2000).

[7] The report is of no probative medical value since a chiropractor is a physician only to the extent that he diagnoses a subluxation; *see Mary A. Ceglia*, 55 ECAB 626 (2004). The report is cited with respect to a factual finding that appellant provided a history of an August 14, 1993 incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 11, 2006 is affirmed.

Issued: January 3, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board