

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

S.M., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Alvin, TX, Employer

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**Docket No. 09-119
Issued: March 23, 2009**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 15, 2008 appellant filed a timely appeal from a February 11, 2008 decision of the Office of Workers' Compensation Programs accepting her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether appellant has established that she sustained a crushing injury of the fingers of the left hand in the performance of duty.

FACTUAL HISTORY

On January 24, 2008 appellant, then a 59-year-old rural carrier, filed a traumatic injury claim (Form CA-1) asserting that on January 17, 2008 she sustained a crush injury to her right little finger when it was accidentally slammed in a delivery vehicle door.

In a February 1, 2008 letter, the Office advised appellant of the additional medical and factual evidence needed to establish her claim. Appellant submitted a January 17, 2008 report

from Dr. Karla L. Dressel, a physician specializing in emergency medicine, which provided a history of injury and diagnosed an injury to the little finger of the right hand.

By decision dated February 11, 2008, the Office accepted that appellant sustained a “crushing injury of fingers, left.”¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² 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 that an injury was sustained while 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 on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee sustained a traumatic 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 that must be considered jointly. First, the employee must submit sufficient evidence to establish that he or she actually experienced the alleged employment incident.⁵ 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.⁶

ANALYSIS

The Office accepted that appellant sustained a crush injury to fingers of her left hand. However, the record demonstrates that appellant injured the little finger of her right hand as was described by Dr. Dressel. The case will be remanded for the Office to correct the record to reflect acceptance of a crush injury to the little finger of the right hand. Following this and any other necessary development, it will issue an appropriate decision in the case.

¹ Following issuance of the February 11, 2008 decision, appellant submitted additional medical evidence. The Board may not consider evidence for the first time on appeal that was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

CONCLUSION

The Board finds that appellant has established that she sustained an injury to the right little finger in the performance of duty. The case will be remanded to the Office for further development.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 11, 2008 is set aside and the case remanded for further development consistent with this decision and order.

Issued: March 23, 2009
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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