

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS J. MYERS and U.S. POSTAL SERVICE,
POST OFFICE, Rockford, Ill.

*Docket No. 96-1365; Submitted on the Record;
Issued March 3, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury in the performance of his federal employment on June 24, 1995.

In the present case, appellant, a letter carrier, filed a traumatic injury claim on June 24, 1995 alleging that at 9:00 a.m. that day he sustained back pain. Appellant also indicated on the claim form that he was "not sure" of the cause of injury. In a form report dated June 24, 1995, appellant's treating physician Dr. Terry Buzzard, a Board-certified family practitioner, indicated that appellant had sustained an injury one month ago, May 1995, which caused upper back and radiating shoulder pain with movement. In a supplemental statement received by the Office of Workers' Compensation Programs on November 26, 1995, appellant alleged that sometime in May 1995 a Doberman charged him and that he threw his mailbag from his shoulder, following which on the next day he felt soreness in his neck and shoulder. Appellant stated that he stayed off work a few days, then went on vacation. Appellant stated that following his vacation he felt sore again when working and then completed the CA-1 form. The Office denied appellant's claim by decision dated February 2, 1996.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including 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 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. These are essential elements of each compensation claim regardless of whether the claim is predicated, upon a traumatic injury or an occupational disease.¹ To determine whether a federal employee has sustained a traumatic injury, in the performance of duty, it must first be determined whether a

¹ Jerry A. Miller, 46 ECAB 243 (1994).

“fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced, the employment incident at the time, place and in the manner alleged. 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.²

In the present case, the Board finds that appellant has not established that a work incident occurred as alleged. The Board has previously stated, that an incident does not have to be confirmed by eyewitnesses, in order to establish the fact that an employee sustained an incident in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. 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, if otherwise unexplained, may cast serious doubt on claimant’s statement.³

While appellant initially alleged that he had sustained an injury at work on June 24, 1995, appellant could not describe any specific incident that occurred that day. The medical evidence of record indicates that appellant had sought medical treatment in May 1995 for right upper back, neck and shoulder pain. Appellant’s treating physician, Dr. Buzzard, diagnosed left thoracic spine strain on June 24, 1995, noted that appellant’s pain had been present for a month, but that “there is no known specific injury.” Appellant was also seen on July 12, 1995, by Dr. Norm A. Hagman, a Board-certified orthopedic surgeon. Dr. Hagman did not note any specific incident in May or June 1995 as the cause of appellant’s complaints.

On September 5, 1995 appellant, was seen by Dr. Morris Marc Soriano, a Board-certified neurosurgeon, at which time appellant related a history of injury, that in May 1995 as he approached a residence while delivering mail, a Doberman advanced towards him which caused him to drop his mailbag, to ward off the dog. Appellant stated that the next morning he was extremely sore in the back of the neck, into the right shoulder, right scapula and into the arm. Dr. Soriano diagnosed disc herniation at C6-7, which he related was probably caused by the motions appellant underwent to avoid the Doberman in May 1995. On September 8, 1995 Dr. H.M. Afram, a Board-certified anesthesiologist, related that appellant sustained injury, in May 1995 causing a disc herniation when a dog pushed him to the floor. In November and December 1995 appellant wrote to the Office alleging that he had sustained an altercation on May 24, 1995 with a Doberman. In his December 7, 1995 letter, to the Office appellant stated that he had reported this injury, to his supervisor on May 26, 1995. Appellant’s supervisor responded on January 1, 1996, that when appellant completed his CA-1 form appellant indicated to him that he could not remember any specific instance or date when his back started to hurt.

The record clearly does not substantiate that any incident occurred on June 24, 1995. While in September 1995 appellant began to describe an altercation with a dog that occurred in May 1995, appellant has not explained why he did not relate this incident on his claim form, that he did file in June 1995, or to his treating physicians until his visit to Dr. Soriano in

² *Gene A. McCracken*, 46 ECAB 593 (1995).

³ *Nathaniel Cooper*, 46 ECAB 1053 (1995).

September 1995. Appellant was treated by Dr. Buzzard and Dr. Hagman at a time more contemporaneous to the alleged injury. The history of injury provided by the most contemporaneous reports have been held by the Board to be of more probative medical value.⁴ In this case the most contemporaneous medical reports do not substantiate a history of employment injury in May or June 1995. The Board also notes that Dr. Afram indicated that appellant had sustained his injury when a dog pushed him to the floor, which is a history that is again inconsistent with that provided by Dr. Soriano, who simply noted that appellant had thrown his mailbag from his shoulder to keep the dog at bay.

The Board finds that appellant's failure to report the alleged injury in May 1995 at the time of the alleged injury, coupled with appellants inconsistent statements as well as the lack of contemporaneous medical evidence including a history of the dog incident, seriously diminishes the probative value of appellant's evidence. Appellant's evidence is not sufficient to establish that he sustained a back injury as alleged.

The decision of the Office of Worker's Compensation Programs dated February 2, 1996 is hereby affirmed.

Dated, Washington, D.C.
March 3, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ See *Joseph H. Surgener*, 42 ECAB 541 (1991).