

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARILYN H. TYSON and U.S POSTAL SERVICE,
POST OFFICE, Los Angeles, Calif.

*Docket No. 96-2052; Submitted on the Record;
Issued September 9, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury on November 30, 1995 in the performance of duty, as alleged.

On November 28, 1995 appellant, then 41-year-old distribution clerk, sustained a thoracic strain in the performance of duty while lifting a tray of mail. Appellant was on light duty for a nonwork-related ankle sprain at the time.

In a report dated November 29, 1995, Dr. James H. Phelps¹ stated that appellant could return to her light-duty work.

On December 11, 1995 appellant filed a traumatic injury claim alleging that she sustained a back injury on November 30, 1995 when she was struck in the back by a bar attached to the cart in which she was sitting.

In statements dated December 7, 1995, two coworkers indicated that they saw appellant sitting in the passenger's seat of a motorized cart and that after her supervisor sat down in the driver's seat appellant arose and stated that the seat had struck her in her back. The two witnesses stated that they did not personally observe the back of the seat strike appellant's back.

In a report dated December 11, 1995, a physician whose signature is illegible related that appellant stated that on November 30, 1995 she had been struck in the back by a bar while seated on a cart and he diagnosed thoracic strain/contusion. He did not provide a rationalized medical opinion as to the cause of the condition.

By letter dated December 12, 1995, appellant's supervisor, Brenda Gillett, stated that on November 30, 1995, she had issued appellant a letter of warning for unsatisfactory attendance

¹ The medical specialty of Dr. Phelps is not indicated in the record.

and told appellant that someone would give her a ride back to her work area. She stated that after she arranged for copies of the letter to be made, she exited her office and saw appellant sitting on a motorized scooter near the front edge of the scooter, holding on to the side rails. Ms. Gillett stated that when she sat down and leaned forward to start the vehicle, appellant jumped up and stated that the backrest of the scooter had struck her in her back. Ms. Gillett stated that she asked appellant how the backrest could have touched her back since she was sitting near the front edge of the scooter.

In a form report dated December 12, 1995, Dr. Phelps diagnosed a lumbosacral strain and indicated that appellant was totally disabled through December 19, 1995. He related that the date of injury was November 28, 1995 and he gave as the history of the injury that appellant was lifting a tray of mail when she injured her back.

In a form report dated January 5, 1996, Dr. Phelps indicated that appellant was totally disabled through January 10, 1996 for a lumbosacral strain. He provided no findings on examination and did not indicate the cause of the condition.

By decision dated February 5, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she had sustained an employment-related injury on November 30, 1995, as alleged.

By an undated letter, received by the Office on March 18, 1996, appellant requested reconsideration of the denial of her claim for an injury on November 30, 1995.

In a statement dated March 6, 1996, a coworker stated that on one occasion when he was riding on a motorized scooter, he observed the backrest move backward about four or five inches when the driver sat down.

By decision dated April 24, 1996, the Office denied appellant's request for further merit review of her claim.

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an injury in the performance of duty on November 30, 1995.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be established whether a "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.² 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.³

In this case, appellant alleged that she sustained an injury to her back on November 30, 1995 when she was struck in her back by the backrest of the employing establishment scooter in

² *John D. Carlone*, 41 ECAB 354 (1989).

³ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

which she was sitting. She provided two witness statements but both witnesses stated that they did not observe the scooter backrest strike appellant. Appellant's supervisor stated that appellant was seated near the front edge of the passenger seat of the scooter and holding on to the side bars when the supervisor entered the driver's seat and indicated that she did not think that the backrest could have struck appellant. In a statement dated March 6, 1996, a coworker stated that on one occasion when he was riding on a motorized scooter, he observed the backrest move backward about four or five inches when the driver sat down. However, his own experience does not establish what occurred to appellant on November 30, 1995 and he did not personally observe what happened to her on that date. The circumstances in this case cast doubt that the incident occurred in the manner alleged by appellant. Further the medical evidence of record does not establish that appellant sustained a medical condition as a result of the incident.

In a report dated December 11, 1995, a physician related that appellant stated that on November 30, 1995 she had been struck in the back by a bar while seated on a cart and he diagnosed thoracic strain/contusion. However, as this physician did not provide any rationalized medical opinion explaining how the condition occurred, this report does not support appellant's claim that she sustained a work-related back injury on November 30, 1995.

In a form report dated December 12, 1995, Dr. Phelps diagnosed a lumbosacral strain and indicated that appellant was totally disabled through December 19, 1995. However, he related that the date of injury was November 28, 1995 and he gave as the history of the injury that appellant was lifting a tray of mail when she injured her back. Therefore, this report does not support appellant's claim of a work-related injury on November 30, 1995 due to being struck by the backrest of a vehicle.

In a form report dated January 5, 1996, Dr. Phelps indicated that appellant was totally disabled through January 10, 1996 for a lumbosacral strain. He provided no findings on examination and did not indicate the cause of the condition. Therefore, this report does not establish that appellant sustained a work-related injury on November 30, 1995, as she alleged.

The April 24 and February 5, 1996 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, D.C.
September 9, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member