

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VANESSA R. HARDY and U.S. POSTAL SERVICE,
BULK MAIL CENTER, Jacksonville, FL

*Docket No. 99-117; Submitted on the Record;
Issued March 28, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

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

On March 29, 1996 appellant filed a claim for an injury sustained on November 15, 1995. Appellant stated that she was bending over a full hamper, threw a bundle of mail on a belt, heard a pop in her neck and experienced pain in her left shoulder and back. In a statement accompanying her claim, appellant stated, that she reported the November 15, 1995 injury to her supervisor on the day it occurred and on the following day, that she was assigned light duty as a result, and that she had to leave her light-duty assignment to see her doctor.

The employing establishment reported that appellant and the supervisor to whom she allegedly reported the November 15, 1995 injury were not at work that day. Appellant's supervisor stated that he had no record and did not remember appellant informing him of an injury at any time. In a report dated November 17, 1995, Dr. Paulo Monteiro, a neurologist, stated that appellant was seen the previous day "for neurosurgical assessment of [the] neck, in between the shoulder blade pain and left shoulder pain." Dr. Monteiro stated that appellant had "been having continued, ongoing problems with her neck for the last three weeks," and that the pain was "made worse after she has been working, bending over in a hamper throwing mail and also while she has to put elastic bands across bundles of mail." Dr. Monteiro diagnosed musculoligamentous strain, recommended medication and physical therapy for a week to 10 days, and stated that appellant "should resume her work."

By decision dated May 29, 1996, the Office of Workers' Compensation Programs found that fact of injury was not established. By letter dated July 2, 1996, appellant requested reconsideration. She submitted replies to the Office's April 22, 1996 request for further information, stating that she told her supervisor that the injury occurred on November 5, 1995 but he said it was November 15, 1995. Appellant also stated that she told a coworker of the injury right after it occurred. By decision dated August 22, 1996, the Office found that the

additional evidence was not sufficient to warrant modification of its prior decision. By letter dated July 14, 1997, appellant requested reconsideration, contending that she was injured on November 6, 1995 while throwing a bundle of mail. Appellant submitted additional evidence, including a notice of removal issued by the employing establishment on July 19, 1996 for failure to work since April 11, 1996 without an acceptable excuse. By decision dated September 18, 1997, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the 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.²

The Board finds that appellant has not established that she sustained an injury in the performance of duty in November 1995 as alleged.

Appellant did not file a claim for an alleged November 1995 injury until March 29, 1996. On her claim form appellant indicated the injury occurred on November 15, 1995. When she was informed that she was not at work on November 15, 1995, appellant stated that the injury occurred on November 5, 1995. In her July 14, 1997 request for reconsideration, appellant stated that the employment injury occurred on November 6, 1995.

Appellant also stated that she reported the November 15, 1995 injury to her supervisor on the day it occurred. The supervisor stated that he had no records and did not remember appellant informing him of an injury at any time. Appellant did seek medical treatment on November 16, 1995. However, the physician who examined her on that date did not report an injury the previous day; instead he stated that appellant had experienced continuing, ongoing neck problems for three weeks. The inconsistencies in the evidence cast serious doubt upon the occurrence of an employment injury in November 1995 as alleged by appellant. Appellant has not met her burden of proof.

¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

² *Dorothy Kelsey*, 32 ECAB 998 (1981).

The decision of the Office of Workers' Compensation Programs dated September 18, 1997 is affirmed.

Dated, Washington, D.C.
March 28, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member