U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JANICE M. GRAHAM and U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn Park, MN

*Docket No. 99-901; Submitted on the Record;*
*Issued May 17, 2000*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on September 19, 1998 as alleged.

On October 25, 1998 appellant, then a former federal employee, filed a claim for a traumatic injury alleging that on September 19, 1998, she injured her lower back while in the performance of duty. She stopped work on September 22, 1998.

In support of her claim, appellant submitted a medical report dated September 23, 1998 from Dr. Johannes Gebre, her treating physician, who examined her that day and attributed her back pain to the alleged September 19, 1998 work-related injury. He advised appellant that she could return to work that day without noting any work limitations. In a medical report also dated September 23, 1998, Dr. Gebre stated that appellant could return to work that day with limitations.

In a statement dated September 22, 1998, appellant's coworker stated that on that day appellant complained of a sore back and that she stated that she had injured it on September 19, 1998. The coworker noted that appellant was "lifting flats off a nutting improperly," that he had advised her as to the proper procedure for lifting mail and that appellant responded that she "can[no]t lift that way." In a statement dated September 23, 1998, the employing establishment stated that appellant failed to appear for work on that day and that she had called around 5:00 a.m. to report that her automobile had broken down and that she was going to get it fixed. Although advised to call back later in the day, appellant did not call back on that date and did not appear for duty on September 24, 1998. In a statement dated September 24, 1998, the employing establishment stated that appellant was separated from employment effective September 25, 1998 due to her failure to maintain a proper work schedule. In a statement dated November 3, 1998, the employing establishment controverted appellant's claim noting that she worked a regular duty shift from September 20 to September 22, 1998 without notifying the employing establishment of her alleged September 19, 1998 injury and that

she was terminated on September 25, 1998 for three separate instances of being charged as absent without leave since September 5, 1998.

By letter dated November 13, 1998, the Office of Workers' Compensation Programs advised appellant of the type of factual and medical evidence necessary to establish her claim.

In a report dated November 27, 1998, Dr. Gebre stated that appellant had been his patient since her initial appointment on September 23, 1998 and that he had seen her in follow-up appointments on November 11 and November 27, 1998. He related appellant's alleged history of injury, noting an injury to her back on September 19, 1998 while lifting mail. Dr. Gebre stated that his diagnosis of low back strain remained after additional appointments on the above referenced dates. He requested authorization for physical therapy for four to six weeks.

In a decision dated December 16, 1998, the Office denied appellant's claim for failure to establish fact of injury.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim.[2] When a claim for compensation is based on a traumatic injury, the employee must establish the fact of injury by proof of an accident or fortuitous event having relative definiteness with respect to time, place and circumstance and having occurred in the performance of duty and by proof that such accident or fortuitous event caused an "injury" as defined in the Act and its regulations.[3]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[4] However, an employee's statement that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[5]

Appellant stated that she was injured on September 19, 1998 when she was lifting mail. However, she presented no reliable, probative or substantial evidence that the incident occurred as alleged. Indeed, the record contains no evidence from any witnesses that the alleged incident occurred or that appellant notified anyone on September 19, 1998 that such an incident occurred. In fact, appellant worked for three days after the alleged incident without notifying management

[1] 5 U.S.C. § 8101.

[2] *Doyle W. Ricketts*, 48 ECAB 167 (1996).

[3] *Linda S. Christian*, 46 ECAB 598 (1995).

[4] *See Nathaniel Cooper*, 46 ECAB 1053 (1995).

[5] *Louise F. Garnett*, 47 ECAB 639 (1996).

that she sustained the alleged injury. Further, a coworker stated that appellant complained of back pain initially on September 22, 1998, at which time she was advised regarding the proper way to lift mail.

The Board finds that the inconsistencies in the evidence described above cast serious doubt upon the validity of appellant's claim. Appellant has not met her burden of proof.

The decision of the Office of Workers' Compensation Programs dated December 16, 1998 is affirmed.[6]

Dated, Washington, D.C.
May 17, 2000

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

[6] The Board notes that subsequent to the Office's December 16, 1998 decision, appellant submitted additional evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 (1952).