

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA K. WOOD and U.S. POSTAL SERVICE,
POST OFFICE, Alderson, WV

*Docket No. 99-2359; Submitted on the Record;
Issued March 12, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained a left shoulder and neck injury in the performance of duty as alleged.

Appellant, then a 41-year-old distribution clerk, filed a traumatic injury claim on April 5, 1999 alleging that she injured her left shoulder and neck while unloading heavy mail sacks at work on April 11, 1998.¹ On the reverse side of her CA-1 claim form, Garland Harris, Jr., appellant's supervisor, asserted that the alleged injury was never reported. Appellant stopped work on April 24, 1998 due to an unrelated stress condition.² She never returned to work.

Appellant submitted a statement supporting her traumatic injury claim dated April 5, 1999. She stated that on April 11, 1998 she began unloading a heavy sack of parcels from the top of an overhead cage and when she pulled the sack, she felt as if her arm had been jerked from her shoulder. Appellant further stated that she and a coworker subsequently weighed the bag at 104 pounds. She indicated that she attempted to report the incident to the postmaster; however, he would not listen to her. Appellant also submitted a statement from Karen Wheatley Boothe dated March 25, 1999, which stated that she witnessed appellant's injury on April 11, 1998. Ms. Boothe reported that on April 11, 1998 appellant was unloading a cage, which was extremely full and after appellant attempted to remove a sack of parcels off the top, she asked Ms. Boothe to assist her; however, she was told that they should work separately. She stated that appellant attempted to lift the sack by herself but was unable at first and when she attempted again she pulled the neck of the sack, she heard something snap, as if a bone had

¹ Appellant also filed an occupational disease claim on April 5, 1999 alleging that on April 11, 1998 she became aware that she developed carpal tunnel syndrome as a result of lifting heavy mail sacks and repetitive movements at work. The record does not reflect a disposition of appellant's April 5, 1999 occupational disease claim.

² The Board notes that appellant filed a claim alleging a stress condition on May 13, 1998 which was later denied by the Office of Workers' Compensation Programs.

popped. When Ms. Boothe reportedly asked whether appellant was all right, appellant responded that she pulled her shoulder. She stated that, after they finished unloading all of the cages, she and appellant were curious as to how much the sack weighed. Ms. Boothe stated that the two of them dragged it over and put it on the scale, which read 104 pounds. She indicated that Mr. Harris, their supervisor, was not at work on the day appellant was injured.

In a narrative statement dated April 14, 1999, Mr. Harris stated that on April 11, 1998 he worked at appellant's duty station and observed her unloading containers but did not recall seeing her unload a heavy sack or weigh a sack of mail that day. He noted that most of the mail and parcels were loose in containers and that they usually do not receive many sacks of mail each day. Mr. Harris indicated that appellant did not report that she had injured her neck and shoulder as alleged and that he was not informed of the injury until April 5, 1999 when she submitted her claim. He further indicated that appellant had filed a separate claim for compensation on May 13, 1998 and later filed a claim for disability retirement which had both been denied. Mr. Harris reported that work with the employing establishment was available to appellant; however, she had decided not to return.

Carolyn Humphreys, a clerk and appellant's acting supervisor, also submitted a statement dated April 14, 1999. Ms. Humphreys stated that she and Mr. Harris were present on April 11, 1998 to observe the operations and that she never saw appellant lift a heavy sack of mail or subsequently weigh a sack of mail that day. She further stated that appellant never reported the alleged incident and to her knowledge never saw a physician for the claimed injury during that time. Ms. Humphreys noted that appellant worked every scheduled shift thereafter until her last day of work on April 24, 1998, without any report of neck or shoulder pain.

The Office also received two CA-20 reports from Dr. Stanley Day, a Board-certified family practitioner, dated April 1 and 8, 1999, in which appellant was diagnosed with bilateral carpal tunnel syndrome and mild left C6-7 radiculopathy. In the April 8, 1999 report, Dr. Day reported a date of injury of July 9, 1996 and that appellant complained of pain and stiffness in the thumbs in 1996, but also noted a history of injury, that approximately a year prior appellant was pulling down a basket with mail that weighed approximately 70 pounds when she felt a pulling in her left shoulder. He further indicated that appellant's carpal tunnel condition was caused by repeated movements of hands and wrists and that lifting at work contributed to the neck and shoulder injury. The Office also received an electromyogram report from Dr. Joe Othman, a Board-certified neurologist, dated March 8, 1999, confirming the above diagnosis, and monthly medical reports for physical examinations dated August 24, 1998 through March 18, 1999, which were unsigned by a physician. Appellant's left shoulder and neck condition were not reported in the monthly reports until the February 18, 1999.

By letter dated May 13, 1999, the Office informed appellant that there were discrepancies in the factual information provided by her, Ms. Boothe, her witness, and the employing establishment and, therefore, additional factual information was required to make a determination regarding her claim. On May 17, 1999 appellant responded to the Office and submitted a June 7, 1999 statement concerning the claimed work incident. She stated that the injury took place on a Saturday and that Mr. Harris did not work on Saturdays. Appellant noted however that she saw Mr. Harris around 8:30 a.m. to count drawers; however, if he was in the

building prior to 8:30 a.m., she was not aware of it. She reiterated that she attempted to report the injury; however, her supervisor would not listen to her and then stated that she was not aware that written notice was required. Appellant also stated that she continued to work after the injury, but that she complained of shoulder pain and requested help with unloading cages. She noted her carpal tunnel condition in her hands and wrists, and explained that it had not affected her shoulder before the claimed injury.

By decision dated June 18, 1999, the Office denied appellant's claim for compensation on the basis that appellant failed to establish that she sustained an injury as alleged.³ The Office found that the factual and medical evidence did not confirm a work injury. The Office noted that appellant did not report the alleged injury to the employing establishment until she filed her claim on April 5, 1999 and that medical evidence submitted failed to indicate a left shoulder condition for approximately a year after the claimed event.

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained a left shoulder and neck injury in the performance of duty as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act⁴ 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 of the Act, that an injury was sustained 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."⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

The Office, in determining whether an employee actually sustained an injury in performance of duty, first analyzes whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁷ The second component is whether the employment incident caused a personal injury and this generally can only be established by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical

³ The Board notes that appellant disagreed with the June 18, 1999 decision and requested an oral hearing by letter postmarked July 8, 1999; however, she subsequently requested that the hearing be dismissed.

⁴ 5 U.S.C. § 8101-8193.

⁵ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁷ *Elaine Pendleton*, *supra* note 5.

opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁸

Due to the inconsistencies in the evidence, along with the conflicting statements made by appellant and the employing establishment, the Board finds that appellant has not established that she sustained a neck and shoulder injury in the performance of duty as alleged.

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 her subsequent course of action. An employee has not met her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁹ 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.¹⁰

In this case, appellant has provided some support for her allegation that she unloaded a sack of mail from an overhead bin on April 11, 1998, in the form of a witness statement from Ms. Boothe. The employing establishment controverted fact of injury and appellant's supervisors asserted that they had observed appellant's work on the date of the alleged injury; however, neither of them observed appellant lifting or subsequently weighing a sack of mail. The Board notes that simply because appellant's supervisors did not observe appellant lift or weigh a sack of mail does not negate the possibility that an injury could have occurred as alleged.

There remain, however, unresolved discrepancies regarding whether the April 11, 1998 injury occurred at the time, place and in the manner alleged, along with the lack of confirmation and late notification of the injury, which cast serious doubt on the veracity of appellant's claim. Appellant has not offered any explanation why she continued activities immediately after the alleged injury, including dragging a heavy sack of mail to a scale simply because she was curious about the bag's weight, after allegedly hearing her shoulder "snap as if a bone had popped." She also has not explained why she continued to work without complaint until she stopped work due to her stress condition on April 24, 1998. While appellant alleges that she requested medical assistance on the day of the injury due to the pain she was experiencing, the record does not substantiate that appellant sought medical treatment for her shoulder and neck condition until February 1999, some 10 months later. She has also not provided any explanation as to why she waited 11 months to file her claim. As appellant has not provided a compelling explanation as to the inconsistencies in her claim, she has failed to establish that the April 11,

⁸ *John M. Tornello*, 35 ECAB 234 (1983).

⁹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

¹⁰ *Dorothy Kelsey*, 32 ECAB 998 (1981).

1998 employment incident occurred in the performance of duty as alleged. The Board also notes that appellant has not established a *prima facie* claim as she has not submitted probative medical evidence causally relating her neck and left shoulder conditions to the alleged incident of April 11, 1998.

The decision of the Office of Workers' Compensation Programs dated June 18, 1999 is affirmed.

Dated, Washington, DC
March 12, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Bradley T. Knott
Alternate Member