

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JODY MARINO and U.S. POSTAL SERVICE,
POST OFFICE, Elk Grove Village, IL

*Docket No. 01-777; Submitted on the Record;
Issued November 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
PRISCILLA ANNE SCHWAB

The issue is whether appellant injured her right radial nerve on September 17, 1998 while in the performance of duty.

On September 8, 1999 appellant, then a 44-year-old supervisor, filed a claim asserting that on September 17, 1998 the door of a bulk mail carrier, which was not locked properly, opened and struck her right upper arm. Appellant explained that she did not report the injury until a year later because she did not think the injury was serious and she feared management would punish her if she filed an injury claim.

The September 3, 1999 report of Dr. Ciro Cirrincione, an orthopedic surgeon, gives the earliest account of the alleged incident, noting that appellant was hit on her right arm by a metal container. One month after the alleged injury, on October 19, 1998, appellant told her neurologist, Dr. Jeffrey Farbman, that she was unable to recall a specific injury to her arm. She related, however, that in her work environment she was quite prone to various injuries.

In a decision dated December 17, 1999, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that appellant had failed to establish fact of injury, that she experienced the claimed accident at the time, place and in the manner alleged.

In a decision dated June 22, 2000, an Office hearing representative affirmed the denial of appellant's claim.

The Board finds that appellant has not met her burden of proof to establish that she injured her right radial nerve on September 17, 1998 while in the performance of duty as alleged.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the

¹ 5 U.S.C. §§ 8101-8193.

essential elements of her claim, including the fact that she sustained an injury at the time, place and in the manner alleged.² 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 surrounding facts and circumstances and her 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.³

Appellant's late notification of a work-related injury casts serious doubt on whether the incident on September 17, 1998 occurred as alleged. She explained her reasons for not reporting the injury sooner, but failed to explain her unwillingness to provide an accurate history of injury to her health care providers. Of most concern is Dr. Farbman's October 19, 1998 report, wherein he stated that appellant was unable to recall a specific injury to the limb. This report is fairly contemporaneous to the incident in question, when events are assumed to be fresher in appellant's memory. Her inability to recall a specific injury to her arm at that point in time naturally raises a question about the trustworthiness of her much later, detailed recollection of the matter and her reasons for not reporting the injury sooner. While it may be true that appellant did not make the connection until her doctors suggested a traumatic etiology, the reliability of appellant's memory raises sufficient doubt about whether she injured herself as alleged. Under these circumstances, the Office properly found that appellant failed to discharge her burden of proof to establish that she sustained an injury in the performance of duty.

² *Robert A. Gregory*, 40 ECAB 478 (1989); *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

³ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).

The June 22, 2000 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 5, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Priscilla Anne Schwab
Alternate Member