

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JONTELLE MITCHELL and U.S. POSTAL SERVICE,
NORTH HOUSTON POST OFFICE, Houston, TX

*Docket No. 00-185; Submitted on the Record;
Issued December 18, 2000*

DECISION and ORDER

Before MICHAEL E. GROOM, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that she sustained an injury in the performance of duty on December 17, 1998, as alleged.

On January 4, 1999 appellant, then a 28-year-old part-time flexible mail processor, filed a claim for traumatic injury (Form CA-1) stating that on December 17, 1998 she felt pains in what she thought were her kidneys, but that, based on a subsequent medical examination, she believed that she had sustained muscle spasms and back strains. The employing establishment stated that appellant related that she was unaware as to what caused her pain.¹

In a medical report dated January 4, 1999, Dr. Azam Kundi, a specialist in internal medicine, stated that he had examined appellant on December 28, 1998, that she had a back sprain, and that he released her to light duty effective the following day.

In a narrative accompanying her claim form dated January 4, 1999, appellant stated:

“On Wednesday, December 16, 1998 I felt sharp pains in what I thought was my kidneys. I thought the pain was better. But on Saturday, December 19, 1998, the pain got too intense. I left to go to the hospital because I could hardly stand. When I saw the doctor he told me that it was muscle spasms and strains on the back. I did n[o]t think it was serious but the pain is n[o]t going away.”

In a second statement of the same date, appellant stated that she was assigned “to cut incoming mail” on December 16, 1998, and that while at work she felt pain in her lower back, but continued to work because the pain was “not that severe at that time.” However, as the pain persisted over the next several days, appellant, on Saturday, December 19, 1998, related that she went to the hospital where she was advised by the attending physician that she had severe muscle

¹ The Board notes that the case file contains a record not associated with this appeal.

spasms and possible strains. Appellant returned to work on December 23, 1998, but had to leave because “the pain returned.” She added that she was not aware that she was required “to report to her supervisor that I felt the pain in my back while on duty on the night of December 16, 1998.”

In a statement submitted to the Office on January 14, 1999, the employing establishment controverted appellant’s claim contending that the timekeeping records fail to verify that she reported for work on December 17, 1998. It submitted a copy of appellant’s timecard for that pay period; pay period 26.

In a note dated January 5, 1999, the employing establishment stated that appellant reported to work on December 29, 1998 with a medical restriction limiting her to no heavy lifting and related that appellant stated that she did not know her back had been hurting. Appellant left work on December 29, 1998 and returned to work on January 4, 1999 with another medical restriction limiting her to lifting no more than five pounds. She did not mention to the employing establishment that her condition was job related.

In a medical report dated January 5, 1999, Dr. Jorge H. Pardo, appellant’s treating physician and a general practitioner, stated that he had examined appellant on that day, determined that she had sustained acute muscle spasm, and released her to light duty. In a medical report dated the same day, Dr. Pardo stated that appellant had acute back strain sustained on December 17, 1998. In a third medical report dated January 5, 1999, Dr. Pardo related appellant’s history of injury noting that she started to feel pain on December 16, 1998 while at work, and that on December 17, 1998, the pain became intense and “[S]he signed out and went to the Methodist Emergency (Hospital).” He stated that appellant had bilateral paraspinal muscle spasms and percussion tenderness. Dr. Pardo also noted appellant’s history of “migraines and kidney problems.”

In a medical report dated January 5, 1999, Dr. Kundi stated that appellant was initially seen on December 17, 1998 for low back pain, and that she was diagnosed with acute lumbar strain and spasm.

In an undated report received by the Office on January 14, 1999, the employing establishment stated that appellant did not work on December 17, 1998, the date she claimed she sustained an injury while at work.

In a medical report dated February 9, 1999, Dr. Steven Seefeldt, Board-certified in internal medicine, stated that on December 17, 1998 appellant sustained “lumbar strain, lifting.” In an attending physician’s report dated June 12, 1999, Dr. Seefeldt stated that appellant sustained a lumbar strain on December 17, 1998 while “lifting at work.”

By letter dated July 20, 1999, the Office advised appellant that the evidence submitted was insufficient to establish that she sustained an injury as alleged. The Office requested that appellant submit medical records pertaining to her injury including dates of examination and treatment, history of injury as given by appellant to her doctor, a detailed description of findings, results of x-rays and laboratory tests, and diagnosis and clinical treatment. The Office also requested that her physician provide an opinion, supported by a medical explanation, as to how

the reported work incident caused or aggravated the claimed injury. The Office indicted that it would keep the record open for 30 days from the date of the letter.

In a narrative dated August 8, 1999, appellant stated that she injured her back on December 17, 1998 when she moved mail from one container to another, and that she “had no similar disability or symptoms before this injury.”

In a medical report dated August 17, 1999, Dr. Donna Bloodworth, appellant’s treating physician, stated that based on a bone scan, appellant sustained an injury to her scapular and rib while lifting mail at work on December 17, 1998.²

By decision dated August 20, 1999, the Office denied appellant’s claim on the grounds that she failed to establish that the alleged incident occurred and thus failed to establish that she sustained an injury in the performance of duty.

The Board has reviewed the record and finds that appellant has not established that she sustained an injury in the performance of duty on December 17, 1998.

An employee seeking benefits under the Federal Employees’ Compensation Act³ 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 timely filed within the applicable time limitation period 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.⁴ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of 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.⁶

An injury does not have to be confirmed by eyewitnesses in order to establish that an 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 or her subsequent course of action.⁷ An employee has not met his or her burden of proof in establishing the occurrence of an

² The Board notes that there is no listing for Dr. Bloodworth in the American Medical Association, *Directory of Physicians in the United States* (35th ed. 1996).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See Elaine Pendleton*, *supra* note 4.

⁷ *Charles B. Ward*, 38 ECAB 667 (1989).

injury when inconsistencies in the evidence cast serious doubt upon the validity of the claim.⁸ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.⁹ 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.¹⁰

In this case, appellant stated on her claim form that she injured her back on December 17, 1998. However, appellant stated in a narrative and a memorandum dated the same day that her claim was based on a December 16, 1998 work-related injury to her kidneys. Similarly, Dr. Pardo, appellant's treating physician, stated that appellant's injury occurred on December 17, 1998, while stating in a separate report that appellant related onset of pain on December 16, 1998 without reference to any work-related factors. Further, the employing establishment stated that appellant did not work on December 17, 1998, while Dr. Seefeldt, also a treating physician, stated that appellant injured her back on December 17, 1998 "while lifting at work."

These inconsistencies in the evidence cast doubt regarding the occurrence of the injury. Appellant did not file a claim until a week after the alleged incident. Further, appellant stated that she initially felt pain on December 16, 1998 and then that she sustained a work-related injury on December 17, 1998. She noted that she had no symptoms before her December 17, 1998 injury. Further, the medical reports also contain internally inconsistent statements, alleging an injury on December 16 and also on December 17, 1998.¹¹

In addition, appellant stated that she injured her back while lifting mail on December 17, 1998 while the employing establishment noted that appellant was not on duty on that date. The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged or if the evidence establishes that the specific event or incident to which the employee attributes the injury was not in the performance of duty.

Given appellant's failure to establish fact of injury, it is unnecessary to address the medical evidence in this case.

⁸ *Tia L. Love*, 40 ECAB 586 (1989).

⁹ *Merton J. Sills*, 39 ECAB 572 (1988).

¹⁰ *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

¹¹ Dr. Pardo stated that appellant had acute back strain sustained on December 17, 1998 while noting that her pain began on December 16, 1998. Dr. Seefeldt made no mention of a December 16, 1998 incident but stated that appellant sustained a work-related injury on December 17, 1998, a nonwork day.

The August 20, 1999 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
December 18, 2000

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member