

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SONIA A. BALDERAS and U.S. POSTAL SERVICE,
POST OFFICE, Loma Linda, CA

*Docket No. 00-213; Submitted on the Record;
Issued December 22, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On July 10, 1997 appellant, then a 57-year-old distribution/window clerk, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that on October 14, 1996 she first realized that her knee and back problems were due to her federal employment.¹ She indicated that, on October 14, 1996, she felt discomfort in her knees and back after picking up a heavy parcel.² In an undated statement received by the Office of Workers' Compensation Programs on July 16, 1997, appellant indicated that she had to wear a knee brace which caused her to have a difficult time picking up the parcel and that she could not ask for help as the other clerk was helping a customer and the remaining employees were at lunch. She worked the window the next day despite having back pain. Appellant had knee surgery on October 17, 1996 and she returned to light-duty work on December 5, 1996. Appellant noted that she discussed her back pain with her treating physician during visits on January 28 and February 26, 1997.

In a July 23, 1997 letter, the employing establishment controverted the claim on the basis that appellant had not reported the injury to her supervisor, Mary Sidney and because appellant was not working the window as it was a federal holiday. The employing establishment also noted that appellant did not report the injury to Ms. Sidney or Ms. Sidney's customer service supervisor and that it was not until approximately June 25, 1997 when appellant requested a CA-2 that Ms. Sidney became aware that appellant had sustained an injury in October 1996.

By letter dated August 6, 1997, the Office requested appellant to submit additional factual and medical evidence to support her claim.

¹ This was assigned claim number A13-1127260.

² On the back of the form, the employing establishment noted that appellant had been "rehabbed on other claim" which was identified as claim number A13-1020146 for her left knee.

By decision dated October 22, 1997, the Office denied appellant's claim on the basis that she failed to establish fact of injury. The Office found that the evidence was insufficient to support that the event occurred at the time, place and in the manner alleged by appellant and that she failed to submit sufficient medical evidence to support her claim.

In a report dated June 9, 1998, Dr. George Hanna, an attending physician, noted an injury date of October 14, 1996 and diagnosed status post lumbar strain. Regarding causation, Dr. Hanna opined that "[g]iven the mechanics of the injury and the subsequent symptoms (the patient bending her back forward since she was unable to squat, as she was wearing the left knee brace) and the subsequent symptoms, it is my medical opinion that the patient sustained a lumbar strain as a result of the injury that she sustained on October 14, 1996."

In an undated letter received by the Office on October 14, 1998, appellant requested reconsideration and submitted a June 15, 1998 report from Dr. Hanna, who indicated that the injury occurred on October 14, 1996 when appellant lifted a large parcel weighing approximately 20 pounds by bending over instead of squatting to lift it and that appellant was wearing a leg brace at the time which precluded her from being able to squat. The physician summarized the medical reports he had reviewed which included a February 26, 1997 report by a Dr. Schoene which indicated that appellant's "main problem is lower back pain." Dr. Hanna noted that appellant did not report the injury since she had been scheduled for knee surgery on October 17, 1996 and she believed the pain in her back would subside with the rest required after her surgery. Physical examination revealed "tenderness on palpation between L4-S1 spinous process" and appellant complained of "constant, nonradiating, lower back pain" which is "aggravated by bending, prolonged sitting or standing, and she states that she cannot lift heavy objects." In conclusion, Dr. Hanna, based upon a review of the medical records and physical examination, diagnosed status post lumbar strain due to the October 14, 1996 employment injury.

By decision dated January 12, 1999, the Office denied appellant's request for modification of the October 22, 1997 decision.³

By undated letter received on July 8, 1999, appellant submitted affidavits, a clerks work schedule and an hour's analysis report dated October 20, 1996 in support of her request. Appellant also noted that she had erred in reporting the injury date as October 14, 1999 since she knew she had injured herself the day after a holiday. In an affidavit dated June 14, 1999, Alma Balaban stated that appellant had worked the window on October 15, 1996, which was a busy day and that appellant was left to work by herself.

In a letter dated July 22, 1999, the Office noted it had received a letter from her on July 8, 1999, but the letter was unclear as to whether appellant was requesting reconsideration or an appeal.

In a letter dated August 13, 1999, appellant requested reconsideration and resubmitted the evidence submitted with her letter received on July 8, 1999.

³ In the decision, the Office noted that it had reviewed information contained in appellant's claim number A13-1020146 which is not in her current claim before the Board.

By decision dated August 27, 1999, the Office denied modification of the prior decisions. The Office noted deficiencies such as no contemporaneous medical evidence, failing to report the injury to the employing establishment or her physicians until a February 26, 1997, and appellant's changing the date of injury from October 14 to 15, 1996 by letter dated August 13, 1996. Thus, the Office determined that the deficiencies in the claim failed to support that an incident occurred at the time, place and in the manner alleged and the medical evidence was insufficient as it was based upon an unsubstantiated history of the injury.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty.

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, and that the claim was filed within the applicable time limitations of the Act.⁵ An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,⁶ that the injury was sustained while in the performance of duty⁷ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁸ 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.⁹

In a traumatic injury case, the employee must establish by the weight of reliable, probative and substantial evidence that the occurrence of an injury is in the performance of duty at the time, place and in the manner alleged and that the injury resulted from a specific event or incident.¹⁰ The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹¹

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific incident occurred at the time, place and in the manner alleged. Appellant did not notify her supervisor until approximately June 25, 1997 which was approximately nine months after the alleged October 14 or 15, 1996 incident. There were no witnesses nor did appellant state that she mentioned the incident to anyone, she continued to work without apparent difficulty following the alleged incident and she failed to

⁴ 5 U.S.C. §§ 8101-8193.

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

⁶ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁷ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *Steven R. Piper*, 39 ECAB 312 (1987).

⁹ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *See Joshua Fink*, 35 ECAB 822, 823-24 (1984).

¹¹ *Eric J. Koke*, 43 ECAB 638 (1992); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

obtain medical treatment until February 1997 approximately four months after the alleged October 14 or 15, 1996 incident. In addition, the employing establishment controverted stating that appellant was not working the window on October 14, 1996 as it was a federal holiday and appellant changed the date of injury to October 15, 1996 by letter dated August 13, 1996. It is appellant's responsibility to establish how, when and where she sustained an injury.

In view of the inconsistencies in appellant's statements regarding how, where and when she sustained her injury, the lack of contemporaneous medical evidence and the medical evidence submitted giving varying histories of injury, the Board finds that there is insufficient evidence to establish that appellant sustained an injury to her back in the performance of duty on October 14 or 15, 1996, as alleged. In addition, the medical evidence notes that appellant's lumbar strain had resolved.

In this case, appellant has not established fact of injury because she has failed to establish by the weight of reliable, probative and substantial evidence that she experienced the October 15, 1996 incident at the time, place and in the manner alleged.

The decisions of the Office of Workers' Compensation Programs dated August 27 and January 12, 1999 are affirmed.

Dated, Washington, DC
December 22, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member