

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of COREY D. LAYTON and U.S. POSTAL SERVICE,
POST OFFICE, Dallas, TX

*Docket No. 00-392; Submitted on the Record;
Issued December 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that he sustained a lower back injury in the performance of duty on January 30, 1999.

Appellant, a 28-year-old mailhandler, filed a traumatic injury claim for benefits on February 7, 1999, alleging that he injured his lower back while lifting a heavy sack of mail on January 30, 1999. By letter dated February 8, 1999, the employing establishment controverted the claim. The employing establishment stated that its personnel records indicated that appellant did not work on Saturday morning, January 30, 1999, the tour of duty in which appellant was claiming injury. Accompanying the letter was a copy of appellant's timesheet for January 1999, which indicated he had been on sick leave on January 30, 1999. The employing establishment also submitted clinical notes dated February 1, 1999, which indicated that appellant had been treated for a mild lumbar sprain and that the date of injury was January 30, 1999.

By letters dated February 19, 1999, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information in support of his claim. The Office requested that he submit additional medical evidence in support of his claim and provide factual evidence, including statements from witnesses, which would corroborate his account of the events which occurred on January 30, 1999. The Office stated that appellant had 30 days to submit the requested information. Appellant did not respond to this request within 30 days.

In a memorandum of telephone call dated March 18, 1999, the Office indicated that it had called appellant to obtain his correct address; the Form CA-801 the Office had sent appellant had been returned because the address appellant provided did not exist. The Office indicated that it would resend the Form CA-801 and additional information to appellant at his correct address.

By decision dated March 22, 1999, the Office denied appellant's claim. The Office stated that it had requested additional factual and medical evidence by letter dated February 19, 1999, but that appellant had failed to respond to this request.

In a letter received by the Office on April 14 1999, appellant requested a review of the written record. In support of his claim, appellant submitted a February 26, 1999 report from Dr. Michael J. Smith, a chiropractor; a history of injury from the employing establishment clinic dated February 1, 1999; and two statements from appellant which related his account of the alleged injury, one dated February 5, 1999 and the other undated. Dr. Smith stated in his report that he had treated appellant for work-related injuries from February 1, 1999 to the date of the report. The February 1, 1999 history of injury from the employing establishment clinic indicates that appellant related he had hurt his lower back while lifting mail on January 30, 1999.

By decision dated July 15, 1999, an Office hearing representative vacated the Office's March 22, 1999 decision. The hearing representative found that appellant had not received due process because he apparently had not received the February 19, 1999 letters requesting additional evidence and was therefore unable to respond within the 30-day limit. The hearing representative therefore remanded the case to the district office for proper development and to issue a *de novo* decision.

By letters dated August 9, 1999, the Office advised appellant that he needed to submit additional information in support of his claim. The Office requested that he submit additional medical evidence in support of his claim and provide factual evidence, including statements from witnesses, which would corroborate his account of the events which occurred on January 30, 1999. The Office stated that appellant had 30 days to submit the requested information. Appellant did not respond to this request within 30 days.

By letter to the employing establishment dated August 9, 1999, the Office, noting that it had received previous correspondence indicating appellant was on sick leave on the day of the alleged injury, requested clarification as to whether he was actually at work on January 30, 1999.

In response to the Office's letter, the employing establishment resubmitted a copy of appellant's timesheet for January 1999, which indicated that appellant had been on sick leave on January 30, 1999. The Office received this letter on August 25, 1999.

By decision dated September 13, 1999, the Office denied appellant's claim, finding that he failed to establish that he sustained an injury in the performance of duty on January 30, 1999.

The Board finds that appellant has failed to establish that he sustained a lower back injury in the performance of duty on January 30, 1999.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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.² These are the essential

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe D. Cameron*, 42 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

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 event or incident occurred at the time, place and in the manner alleged. Although appellant alleged in his CA-1 form that he injured his lower back on January 30, 1999, this statement was subsequently contradicted by his January 1999 timesheet which indicated he was on sick leave during the period in which he claimed injury.⁶ This contradictory evidence created an uncertainty as to the time, place and in the manner in which appellant sustained his alleged lower back injury.

In addition, appellant failed to submit to the Office a corroborating witness statement in response to the Office’s request. This casts additional doubt on appellant’s assertion that he strained his lower back while lifting sacks of mail on January 30, 1999. The Office requested that appellant submit additional factual and medical evidence explaining how he injured his lower back on the date in question and requested additional medical evidence in support of his claim that his lower back pain was related to the alleged work incident of January 30, 1999. Appellant failed to submit such evidence. Therefore, given the inconsistencies in the evidence regarding how appellant sustained his injury, the Board finds that there is insufficient evidence to establish that appellant sustained an injury in the performance of duty on January 30, 1999, as alleged.⁷

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.* For a definition of the term “traumatic injury,” see 20 C.F.R. § 10.5(ee).

⁶ The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *See generally Sue A. Sedgwick*, 45 ECAB 211, 218 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

⁷ *See Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in appellant’s statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

The decision of the Office of Workers' Compensation Programs dated September 13, 1999 is hereby affirmed.⁸

Dated, Washington, DC
December 15, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Valerie D. Evans-Harrell
Alternate Member

⁸ In a letter accompanying his appeal to the Board, appellant stated that he wished to submit additional factual and medical evidence in support of his claim. The Board does not have jurisdiction to consider any new evidence; however, appellant may submit such evidence in a request for review to the Office pursuant to 5 U.S.C. § 8128. 20 C.F.R. § 610(b).