

On June 15, 2004 appellant, then a 39-year-old former clerk, filed a claim alleging that she injured her low back on July 4, 2003: “I know this happened at work because when I picked up the bin on the night of July 4, 2003 I heard my back crack.” She explained the reason she did not file a notice and claim with the employing establishment within 30 days: “Wasn’t aware she needed to apply for disability/worker’s comp[ensation] until her doctor asked her for it.”

On June 17, 2004 a postmaster commented on appellant's claim:

"I was the [p]ostmaster of Old Greenwich from November 2002 to January 17, 2004. I hired [appellant] as a [c]asual [c]lerk in 2003. She was a good employee, did what was required of her position without problems. During the summer of 2003 [appellant] went out sick. She told us (myself and supervisor Kevin Hogan that she had back problems. [Appellant] was asked more than once both by me and Mr. Hogan if her 'problems' were work related and responded negatively. She stayed out for a period of time and a few times brought in documentation for her absence. At no time did [appellant] infer that this alleged ailment was work related. As a matter of fact she submitted [m]edical [d]ocumentation to me stating that her back problems were due to obesity. At one meeting [appellant] told me that she was told by her doctor that she needed to lose weight to help her with her back problem.

"When [appellant's] condition was not improving and [she] was again asked when she would return to work, [appellant] stated that she wanted some time to heal up completely. At that time [she] decided to resign, with the anticipation that we would rehire [appellant] as a casual at a later date. On her PS 2574 [appellant] stated that she was resigning for personal health reasons."<sup>1</sup>

A physical therapy referral, which appellant signed on July 23, 2003, indicated that her severe low back pain had its onset on July 7, 2003.

On July 13, 2004 appellant again described her injury: "On July 4, 2003 my hamper was full of mail and tipped over, as I bent over to pick it up I heard my back make a cracking sound. By July 8, 2003, I had to go to the doctor because I was in unbearable pain." She also addressed her delay in filing notice and a claim:

"The reason I did not file before now is because I didn't know where to go and when I went to Camp Avenue I was given the wrong numbers. So I had to do some research on my own and ended up going to two other agencies for assistance (Unemployment & SSI Disability) and they both denied me because they indicated that I needed to file for Work[er's] Compensation with the Postal Service."

In a decision dated August 23, 2004, the Office denied appellant's claim on the grounds that the evidence was insufficient to establish that the incident occurred as alleged.

Appellant requested reconsideration. She submitted a statement from Darrien C. Graham:

"I Darrien Graham, was a supervisor in the Old Greenwich Post Office from Jan[uary] 2003 until June of 2004. During this time I was aware that [appellant] a

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<sup>1</sup> The employing establishment stated that appellant resigned in September 2003 for "personal illness."

mail handler in the Old Greenwich Post [Office], sustained [an] on[-]the[-]job injury between the end of June 2003 and the first of July 2003.”

Appellant submitted an October 10, 2003 fact finding statement, in which she explained that when she voluntarily separated on September 18, 2003, she came in with a doctor’s note stating that she would need more time off due to a work-related injury: “I was injured June 30, 2003, I picked up a bucket of first call mail and I twisted my back.” She also submitted an emergency room instruction sheet indicating that she was seen for low back pain/strain on July 9, 2003.

In a decision dated February 8, 2005, the Office reviewed the merits of appellant’s claim and denied modification of the August 23, 2004 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of establishing the essential elements of the 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 or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

In order to determine whether an employee sustained an injury in the performance of her 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 that is alleged to have occurred. An alleged work incident 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 statement must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. A consistent history of the injury, as reported on medical reports to the claimant’s supervisor and on the notice of injury, can also be evidence of the occurrence of the incident. 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 cast doubt on an employee’s statements in determining whether he or she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantive evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, an employee’s

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Caroline Thomas*, 51 ECAB 451 (2000).

statement alleging 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.<sup>4</sup>

### ANALYSIS

The evidence in this case casts serious doubt on appellant's claim that she injured her low back on the night of July 4, 2003 when she bent over to pick up a hamper full of mail. Nothing in the record confirms that this injury occurred as alleged. Mr. Graham, a supervisor at the time, stated that he was aware that appellant had sustained an on-the-job injury between the end of June and the first of July 2003. This is not consistent with her claim, the evidence is weak because Mr. Graham demonstrated no knowledge of the nature of the injury, how it occurred or how he became aware of it. He did not support the time identified by appellant, the night of July 4, 2003. In her October 10, 2003 fact finding statement, appellant described twisting her back on June 30, 2003 when she picked up a bucket of first-call mail. This statement is inconsistent with her allegation of a hamper incident on July 4, 2003. Appellant did visit an emergency room for low back pain on or about July 9, 2003, but the hospital instruction sheet she submitted provides no history of injury or other indication that her low back pain had anything to do with her federal employment, much less a hamper incident on July 4, 2003.

The postmaster stated that appellant had more than once informed him and a supervisor that her back problems during the summer of 2003 were not work related, that he had seen medical documentation attributing her back problems to obesity and that appellant had resigned her position for "personal health reasons." The postmaster's statement is strong and persuasive evidence against her claim. The physical therapy referral signed by appellant on July 23, 2003 -- reasonably contemporaneous to the alleged hamper incident on July 4, 2003 -- indicated that her severe low back pain had its onset on July 7, 2003. Appellant has not reconciled these contradictions in the record.

Even appellant's reason for filing a late notice lacks consistency. On her June 15, 2004 claim form, she stated that she was not aware she needed to apply for disability or workers' compensation until her doctor asked her. A month later, on July 13, 2004 she explained that the delay occurred because she did not know where to go and was given the wrong numbers, because she had to do some research and ended up going to two other agencies for assistance "and they both denied me because they indicated that I needed to file for [w]ork[ers'] [c]ompensation with the [employing establishment]." She made no mention of her doctor.

The evidence casts too much uncertainty on this claim. In addition, there is evidence actually rebutting the claim. The Board finds that appellant has failed to establish by a preponderance of the reliable, probative and substantial evidence the essential elements of her claim, including the fact that she sustained an injury at the time, place and in the manner alleged. The Board will, therefore, affirm the Office's decisions denying benefits.

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<sup>4</sup> *Id.*

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she injured her low back in the performance of duty on July 4, 2003. The evidence is insufficient to establish that the incident occurred as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 8, 2005 and August 23, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: July 22, 2005  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board