

**United States Department of Labor
Employees' Compensation Appeals Board**

V.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Brooksville, FL, Employer**

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**Docket No. 06-1497
Issued: January 30, 2007**

Appearances:
William Hackney, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 19, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 28, 2005 and May 30, 2006 merit decisions denying his claim for an employment-related injury. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty.

FACTUAL HISTORY

On March 16, 2005 appellant, then a 55-year-old rural letter carrier, filed an occupational disease claim alleging that his work caused him to sustain a spur on his spine which rubbed against a nerve. Appellant first became aware of his injury on January 19, 2005 and that it was caused or aggravated by his employment on February 21, 2005. Regarding the relationship of

the injury to his employment, appellant stated: “The more I drove and reached to deliver mail and bent to pick up mail in car, the knee got sore to the point I could not put any weight on it.”¹

By letter dated May 26, 2005, the Office requested that appellant submit additional factual and medical evidence in support of his claim. In an undated statement received by the Office on June 13, 2005, appellant alleged that the repetitive bending, stretching and lifting required by his mail delivery job, which he had performed for 25 years, had caused or aggravated his back and lower leg conditions. Appellant indicated that at least 500 times per day he would bend to his right and reach for mail on the right front floor of his vehicle and then stretch to deliver the mail into mailboxes through the right window of his vehicle.

In two undated statements received by the Office on June 13, 2005, appellant stated that on January 19, 2005 he got out of his vehicle to deliver a package and felt a sharp but minor pain in his right knee when he first put weight on his right leg. Appellant indicated that every time he got out of his vehicle and put weight on his right leg he would experience pain in his right knee. Appellant believed that he had sustained a minor strain but that his condition worsened over the course of the following week. He initially sought medical treatment on January 25, 2005 but the physician was not interested in treating employment-related injuries. Appellant continued to work and his right knee pain worsened to the extent that he experienced it not only when he stood up but also when he walked. By January 30, 2005 the pain had worsened to the extent that appellant could not stand and that on January 31, 2005 a friend helped him walk to the office of Dr. Muhamad I. Saleh, an attending Board-certified neurologist.² Appellant stated that he had to walk on crutches until February 21, 2005 and, after a few weeks of lessening symptoms, his condition became worse. On February 21, 2005 Dr. Saleh told him that a spur at L4-5 was causing the pain in his knee. Appellant indicated that he continued to have pain in his right knee when he engaged in various activities and he had pain which extended from his back to his right knee.

Appellant submitted treatment notes and work restriction forms which indicated that he reported experiencing low back, right leg and right knee pain. In a February 21, 2005 report, Dr. Saleh noted in the history section that appellant’s “low back pain continued to be severe at times with diffuse tenderness and spasm.” He diagnosed lumbosacral radiculopathy and lumbalgia. In a July 7, 2005 note, Dr. Selah stated: “I feel that [appellant’s] leg pain is due to spur on spine and is being aggravated on the job by repetitive bending and stretching delivering the mail.”³

¹ It is not entirely clear when appellant stopped work. Appellant’s supervisor indicated that he stopped work on February 7, 2005 but later statements from appellant suggested that he stopped work on January 30 or 31, 2005.

² Appellant indicated that he told Dr. Selah on February 7, 2005 that he began to experience a very minor pain in his low back after the January 31, 2005 visit.

³ The findings of February 16, 2005 x-ray testing showed degenerative facet disease at L4-5 and L5-S1 and congenital asymmetry at the lumbosacral junction. The findings of February 2, 2005 x-ray testing of the right knee showed unremarkable results.

In a November 25, 2005 report, Dr. H. Gerald Siek, an attending Board-certified orthopedic surgeon, stated that appellant reported that for most of the time between 1969 and 2005 he “had no significant injuries” while working at the employing establishment. Dr. Siek indicated that appellant described an incident on November 25, 2005 when he picked up a 20-pound mail tub, twisted to the left while putting his weight on his right leg and felt a sharp pain in his right leg. Appellant reported experiencing severe low back pain after he continued his mail delivery duties that day. Dr. Siek diagnosed “sprain of the lumbar spine, rule out disc pathology in the lumbar spine, chondromalacia of the right patella and possible defect in the patella with a loose body in the right knee.” In a form report dated December 1, 2005, Dr. Siek stated that appellant reported that on November 25, 2005 he picked up a 20-pound mail tub, twisted to the left and felt sudden sharp pain in his low back as he dumped the contents of the tub into a wagon. Dr. Siek diagnosed “rule out disc pathology low back, chondromalacia right patella and rule out loose body right knee” and checked a box indicating that the diagnosed conditions were caused and aggravated by an employment activity.

By decision dated July 28, 2005, the Office denied appellant’s occupational disease claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained an injury in the performance of duty. The Office stated: “The evidence of file supports that the claimed events occurred. However, there is no medical evidence that provides a diagnosis which could be connected to the events.”

Appellant requested a hearing before an Office hearing representative. At the April 5, 2006 hearing, appellant testified that on January 19, 2005 he lifted a large 30-pound package and then suddenly squatted down to place it on the ground after he heard a sudden noise. Appellant indicated that he experienced a sharp pain in the right side of his low back when he stood up and that when he walked back to his vehicle he felt an even sharper pain in the back of his right leg. Appellant stated that he delivered 30 more packages that day and that every time he got in or out of the vehicle and put weight on his right leg he felt pain in that leg. Appellant indicated that his condition worsened thereafter and that he sought medical attention about a week after January 19, 2005. The Office hearing representative asked appellant whether there were any other incidents or conditions which contributed to his claimed condition and he responded by describing a January 31, 2005 incident at work. Appellant asserted that on that date he reached to pick up a package in the extreme right hand corner of his vehicle and felt pain in his right low back when he straightened up. Appellant indicated that when he went to deliver his next package outside the vehicle he experienced pain when he tried to put weight on his right leg. Appellant asserted that he also reinjured his back and right leg on November 25, 2005.

By decision dated May 30, 2006, the Office hearing representative affirmed the July 28, 2005 decision, as modified to reflect that appellant now alleged that he sustained traumatic injuries, including those described as occurring on January 19 and 31, 2005, but did not establish the occurrence of these incidents at the times, places and in the manners alleged. The Office hearing representative determined that there were significant factual discrepancies which cast doubt on the validity of appellant’s assertion that he sustained the employment incidents as alleged.

LEGAL PRECEDENT

An employee who claims benefits under the Federal Employees' Compensation Act⁴ has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁵ An injury does not have to be confirmed by eyewitnesses in order to establish the fact 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 subsequent course of action.⁶ An employee has not met his burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁷ 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁸ However, an employee's 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.⁹

After establishing the occurrence of an employment incident, an employee must show that any disability and/or specific condition for which compensation is claimed are causally related to an accepted employment incident or factor.¹⁰ The medical evidence required to establish a causal relationship between a claimed period of disability and an employment injury is rationalized medical opinion evidence.¹¹

ANALYSIS

Appellant alleged that he sustained employment-related injuries to his back and right leg, in that his employment duties caused him to sustain a spur on his spine, which rubbed against a nerve. The Office found that there were such significant discrepancies in appellant's account of the employment factors which he felt caused his claimed condition that he failed to establish the factual basis of his claim.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁶ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁷ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁸ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

⁹ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

¹⁰ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹¹ *See Donna Faye Cardwell*, 41 ECAB 730, 741-42 (1990).

The Board finds that appellant failed to establish the occurrence of employment factors in the present case. There are significant inconsistencies in the evidence which cast serious doubt upon the validity of his claim.

Appellant initially filed his claim as an occupational disease claim in March 2005 and stated: "The more I drove and reached to deliver mail and bent to pick up mail in car, the knee got sore to the point I could not put any weight on it." In June 2005, he submitted several statements in which he attempted to clarify his claimed employment factors. In one statement, appellant seemed to implicate a number of his duties over an extended period of time. He asserted that the repetitive bending, stretching and lifting required by his mail delivery job, which he had performed for 25 years, had caused or aggravated his back and lower leg conditions. However, in two other statements from this period, he indicated that his injury was traumatic in nature in that it began on a single date, January 19, 2005. Appellant stated that on January 19, 2005 he got out of his vehicle to deliver a package and felt a sharp but minor pain in his right knee when he first put weight on his right leg. He indicated that every time he got out of his vehicle and put weight on his right leg he would experience pain in his right knee. The Board notes that the medical evidence of record from around January 19, 2005 does not contain any description of the employment incident that appellant alleged occurred on that date.

After the initial denial of his claim, appellant requested a hearing before an Office hearing representative. At the April 5, 2005 hearing, appellant created a significant inconsistency when he emphasized that an entirely different incident on January 19, 2005 was the cause of his claimed back and right leg conditions. He testified that on January 19, 2005 he lifted a large 30-pound package and then suddenly squatted down to place it on the ground after he heard a sudden noise. Appellant indicated that he experienced a sharp pain in the right side of his low back when he stood up and that when he walked back to his vehicle he felt an even sharper pain in the back of his right leg.¹² The Office hearing representative asked appellant whether there were any other incidents or conditions which contributed to his claimed condition and he responded by describing a January 31, 2005 incident which he had not previously mentioned. Appellant testified that on January 31, 2005 he reached to pick up a package in the extreme right hand corner of his vehicle and felt pain in his right low back when he straightened up. Appellant indicated that when he went to deliver his next package outside the vehicle he experienced pain when he tried to put weight on his right leg.

The Board also notes that the medical evidence does not contain any description of the claimed January 19, 2005 lifting of the 30-pound package or the January 31, 2005 incident. In fact, appellant's statements from June 2005 cast doubt upon his description of the January 31, 2005 incident. In those statements, appellant asserted that by January 30, 2005 his pain had worsened to the extent that he could not stand and that on January 31, 2005 a friend had to help him walk to the office of Dr. Saleh, an attending Board-certified neurologist. Further confusion regarding the claimed cause of appellant's injury is created by the fact that the record contains medical reports which describe a November 25, 2005 incident involving the lifting of a 20-pound mail tub and twisting while dumping out the contents of the tub.

¹² Appellant also stated that he delivered 30 more packages that day and that every time he got in or out of the vehicle and put weight on his right leg he felt pain in that leg.

Appellant has not provided any explanation for these significant discrepancies regarding the cause of his claimed condition. He has not clearly explained whether he felt that the injuries occurred over a period of time or started on a specific date such as January 19, 2005. Appellant has not explained why he provided two different accounts of the incidents of January 19, 2005 and why he initially did not describe the claimed incident of January 31, 2005 nor did he explain why these incidents were not mentioned in the contemporaneous medical reports. Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value, there are sufficient inconsistencies in appellant's description of the claimed employment factors to cast doubt upon the validity of his claim. Given that appellant has not established the factual aspect of his claim, it was appropriate for the Office to deny his claim without evaluating the medical evidence of record.¹³

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 30, 2006 and July 28, 2005 decisions are affirmed.

Issued: January 30, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹³ See *supra* notes 5 and 10 and accompanying text.