

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

A.F., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Mansfield, MA, Employer**

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**Docket No. 10-724
Issued: December 14, 2010**

Appearances:

*William E. Shanahan, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 25, 2010 appellant filed a timely appeal from an Office of Workers' Compensation Programs' merit decision dated January 5, 2010 which denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a left arm injury on June 19, 2009.

FACTUAL HISTORY

On June 22, 2009 appellant, then a 22-year-old mail carrier filed a traumatic injury claim alleging that she injured her left arm on June 19, 2009 while she was delivering mail. She stopped work on June 22, 2009 and returned to full-time light-duty work on July 13, 2009. On June 24, 2009 Michael J. Lombardi, postmaster, controverted the claim. He reviewed appellant's

managed service point (MSP) scans for June 19, 2009 which revealed that she was not delivering mail at the place she identified.

In a June 22, 2009 note, Dr. Dmitry Ilyevsky, a Board-certified internist, advised that appellant was unable to work from June 22 to 24, 2009. In a June 24, 2009 note, he reported treating appellant on June 22, 2009 for shoulder pain and limited range of motion which occurred after lifting a mailbag. On June 29, 2009 Dr. Ilyevsky diagnosed left shoulder bursitis versus rotator cuff tear. Appellant reported experiencing left shoulder pain on June 19, 2009 after lifting a mail bundle. Dr. Ilyevsky noted with a checkmark "yes" that her condition was caused or aggravated by an employment activity and was totally disabled. He returned appellant to work part time, four hours a day.

Appellant was also treated by Dr. James Snead, a Board-certified orthopedic surgeon, on July 6, 2009 for left shoulder pain. She reported lifting a heavy box of mail on June 19, 2009 and having left shoulder pain. Dr. Snead noted x-ray findings and diagnosed left shoulder calcific tendinitis with associated adhesive capsulitis. Appellant also submitted physical therapy notes. She reported injuring her left shoulder on June 19, 2009 while at work after lifting a large bundle of mail.

On June 29, 2009 Paula A. Rossi, an employing establishment human resource specialist, controverted the claim noting that appellant allegedly sustained an injury on June 19, 2009 but delayed in notifying her supervisor until June 22, 2009. Appellant alleged that the injury occurred on June 19, 2009 while delivering mail on Cottage Street; but her scans revealed that she did not deliver mail on Cottage Street that day.

In a letter dated July 14, 2009, the Office advised appellant of the factual evidence needed to establish her claim and requested additional evidence.

In an August 2, 2009 statement, appellant indicated that on June 19, 2009 she was delivering mail at a residence on Cottage Street when she felt a muscle spasm. She rested her arm on Sunday and when her condition did not improve, she sought treatment on Monday, June 22, 2009. Appellant reported the location of the incident to Mr. Lombardi and Mr. Spencer, who informed her that pursuant to the MSP scan she was not at the identified residence, Cottage Street, on June 19, 2009. She requested to see the scan but her request was denied. Appellant sought assistance from her union representative. She asserted that she felt a muscle spasm in her shoulder while delivering mail. Appellant submitted physical therapy notes and a July 23, 2009 treatment note from Dr. Snead who treated her and diagnosed left shoulder pain, possible labral pathology and left shoulder impingement syndrome.

In a decision dated August 13, 2009, the Office denied appellant's claim. It found that the evidence did not establish that she sustained the June 19, 2009 injury at the time, place and in the manner alleged.

On October 8, 2009 appellant requested reconsideration. She asserted that the only evidence casting doubt on her claim was a June 24, 2009 statement from Mr. Lombardi indicating that her schedule and MSP scan for the date of injury revealed that she was not delivering mail on Cottage Street as alleged. Appellant asserted that it was the Office's

responsibility to obtain the schedule and scan and it erred in failing to investigate this matter prior to issuing a decision.

The employing establishment submitted an October 29, 2009 letter from Mr. Lombardi, who explained that the employing establishment used an MSP scan system to assist in the efficiency of the letter carriers delivery time. Each carrier was assigned a hand held scanner and throughout their delivery day they were required to scan barcodes on designated mailboxes. Mr. Lombardi noted that appellant reported that she was injured on June 19, 2009 while performing her duties at a specific residence, Cottage Street, on Route 13. The scanned carrier report revealed that she was not on city Route 13 on June 19, 2009; rather, another employee was assigned this route and appellant was on Route 8. Mr. Lombardi attached the June 19, 2009 MSP reports for appellant and her coworker to establish that she did not deliver mail on Cottage Street.

In a November 15, 2009 statement, appellant advised that her job required her to assist coworkers that were on vacation, sick or running behind on their route. She frequently received calls from her superiors requesting that she assist other carriers. Appellant asserted that on June 19, 2009 Mr. Spencer instructed her to assist Mr. Lorenzi with his mail route and that at about 5:00 p.m. she met Mr. Lorenzi and he gave her part of Route 13 on Cottage Street. She was "100 percent sure" that she scanned the route but must have forgotten since it was not reflected on the scan report. On November 17, 2009 appellant's attorney asserted that she was on Cottage Street on the day of injury assisting her coworker with his route when she forgot to scan while on the route.

In a November 24, 2009 letter, the Office requested the employing establishment provide comments from a knowledgeable supervisor on appellant's allegation that Mr. Spencer instructed her to assist Mr. Lorenzi at the end of her mail route which encompassed part of Route 13 and Cottage Street.

In a December 9, 2009 statement, Mr. Spencer advised that on June 19, 2009 appellant did not work on Cottage Street as alleged. He stated that the MSP scan established that she was not on Cottage Street that day; rather her coworker had delivered mail. Mr. Spencer attached the June 19, 2009 MSP carrier reports.

In a December 11, 2009 statement, appellant indicated that on June 19, 2009 she punched in at 10:00 a.m. and Mr. Spencer instructed her to assist her coworker at the end of her mail route. She met Mr. Lorenzi on Church Street next to Cottage Street and began to deliver mail around 4:54 p.m. Appellant had requested that he verify that she assisted him in delivering mail on Cottage Street on June 19, 2009 but he was not sure and did not want to get involved. She submitted documents related to her Equal Employment Opportunity (EEO) complaint against the postmaster. Appellant also submitted copies of a personal calendar for June and July 2009, which noted that she was injured on June 19, 2009 at 5:00 p.m.

In a December 22, 2009 statement, counsel indicated that there was only one relay box for all the mail on Cottage Street. The MSP scan of appellant's coworker revealed that he scanned the relay box at 2:17 p.m. Appellant did not forget to scan the relay box on Cottage Street; rather she did not have to scan the box because she received the mail directly from

Mr. Lorenzi who had previously scanned the box. Even though her scan did not show Cottage Street, this did not prove that she was not there on June 19, 2009 when injured.

By decision dated January 5, 2010, the Office denied modification of the August 13, 2009 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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."¹ 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.²

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.³ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁴ 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 her subsequent course of action.⁵ 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.⁶ 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.⁷ Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

³ *Elaine Pendleton*, *supra* note 1.

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

⁵ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁶ *Id.* at 255-56.

⁷ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

probative value and will stand unless refuted by strong or persuasive evidence,⁸ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.⁹

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁰

ANALYSIS

Appellant alleged that on June 19, 2009 she lifted a flat of mail out of her truck and injured her left arm while delivering mail on Cottage Street. She did not stop work at the time of the alleged injury or seek medical treatment. The Board finds that the claimed employment incident did not occur as alleged.

Appellant asserted that she timely reported her injury to her supervisors Mr. Spencer and Mr. Lombardi and she sought treatment on June 22, 2009 after her arm did not improve. She initially stated that the incident occurred at a specific location on Cottage Street and asserted that her supervisors would not produce an MSP scan to verify her presence there. When the employing establishment provided the MSP scan showing that a coworker delivered mail on Cottage Street, appellant asserted that on June 19, 2009 Mr. Spencer instructed her to assist him at the end of her mail route. She met the coworker on Church Street next to Cottage Street and began to deliver the mail around 4:54 p.m. However, the record does not support appellant's assertion. On June 24, 2009 Mr. Lombardi checked her MSP scans for June 19, 2009 which showed that she did not deliver mail on the Cottage Street route that day. On October 29, 2009 Mr. Lombardi explained the scan system, noting that each carrier was assigned a handheld scanner and was required to scan barcodes on designated mailboxes throughout the delivery day. Although appellant reported being injured on Cottage Street on Route 13, Mr. Lombardi advised that she was not on Route 13 or Cottage Street on June 19, 2009. Rather, she was assigned to Route 8 and Route 15. The MSP carrier reports for June 19, 2009 revealed that a coworker was the only carrier to deliver mail on Cottage Street. Similarly, in a December 9, 2009 statement, Mr. Spencer reiterated that on June 19, 2009 appellant did not work on Cottage Street as alleged and that the MSP scan showed that a coworker delivered the route. The Board notes that lack of confirmation of the claimed incident cast doubt on the validity of appellant's claim.

Appellant submitted differing statements with regard to whether she scanned the relay box on Cottage Street on June 19, 2009. On November 15, 2009 she alleged that Mr. Spencer had instructed her on June 19, 2009 to assist with the mail route. At approximately 5:00 p.m., appellant met her coworker and he gave her part of Route 13 on Cottage Street. She was "100

⁸ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

¹⁰ *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

percent sure” that she scanned the route but she must have forgotten. On November 17, 2009 appellant asserted that she had assisted her coworker but forgot to scan the relay box. In a December 22, 2009 statement, she indicated that there was only one relay box on Cottage Street and that she did not forget to scan it; rather she did not scan the box because her coworker had scanned it at 2:17 p.m. and she subsequently received the mail directly from him.

Additionally, there were no witnesses to the alleged injury. While 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, the employee’s statement must be consistent with the surrounding facts and the circumstances and her subsequent course of action.

While there are medical treatment notes from Dr. Ilyevsky beginning June 22 and 24, 2009 that provide some history of injury, he does not mention a date of injury of June 19, 2009, rather he noted treating appellant on June 22, 2009 for shoulder pain after lifting a “mailbag.” Similarly, on June 29, 2009 he noted the mechanism of injury was lifting a “mail bundle.” On July 6, 2009 Dr. Snead noted that appellant experienced left shoulder pain after lifting a “heavy box of mail” on June 19, 2009. These notes do not relate a history of lifting a flat of mail on June 19, 2009 nor do they address the inconsistency in the evidence regarding where appellant worked on June 19, 2009.

The circumstances of confirmation of the claimed incident and inconsistencies about the time and place of injury cast serious doubt upon the validity of the claim. For these reasons, the Board finds that appellant has not established that the June 19, 2009 incident occurred as alleged. As appellant has not established that the June 19, 2009 incident occurred as alleged, it is not necessary for the Board to consider the medical evidence regarding causal relationship.¹¹ Consequently, appellant has not met her burden of proof in establishing her claim.

On appeal, appellant asserts that the Office relied too much on the MSP scans for June 19, 2009 which show that she did not scan the relay box on Cottage Street on June 19, 2009. She contends that the surrounding facts and circumstances and her subsequent course of action are consistent with an injury at the time, place and in the manner alleged. As noted, however, the record does not establish that appellant scanned the relay box on Cottage Street; rather the evidence suggests that another carrier, Mr. Lorenzi, scanned the box at 2:17 p.m. There is no evidence that appellant was present at Cottage Street as alleged. The employing establishment provided MSP carrier reports which support that only her coworker delivered mail on Cottage Street. For the reasons noted, appellant has not met her burden of proof.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury on June 19, 2009 at the time, place and in the manner alleged.

¹¹ See S.P., 59 ECAB 184 (2007).

ORDER

IT IS HEREBY ORDERED THAT the January 5, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 14, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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