

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of COLLEEN MERCER and U.S. POSTAL SERVICE,  
POST OFFICE, Jenison, Mich.

*Docket No. 96-917; Submitted on the Record;  
Issued February 5, 1998*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on February 18, 1995.

On February 27, 1995 appellant, then a 47-year-old supervisor, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on February 18, 1995 she developed pain in her left arm and shoulder "while lifting boxes of express envelopes from [the] top shelf in [the] supply room." Appellant related that she felt a sharp pain in her left shoulder blade which worsened the next morning. On the reverse side of the claim form, appellant's supervisor indicated that the employing establishment controverted the claim on the grounds that she did not report the injury until after receiving a disciplinary action six days later.

In a witness statement on the claim form, Mr. Mark Martinue, a coworker, stated that he entered the room where the boxes were and that he did not "remember [appellant] telling me about her shoulder."

In a report dated February 24, 1995, Dr. Farook J. Kidwai, a Board-certified neurosurgeon, related that he treated appellant on that date and noted her history of recurrent neck pain for several years. Dr. Kidwai related:

"[Appellant] states that, for the past one week, she has been having excruciating pain in her left upper extremity with numbness, tingling, and weakness in the same distribution. She states that she does not remember a predisposing injury or trauma which could have started her symptoms. She states that she woke up this morning with this pain. She states that she had similar pain in her left upper extremity about five years ago when she fell off of a bicycle."

Dr. Kidwai diagnosed cervical spondylosis with C6-7 radiculopathy, to rule out brachial plexopathy and peripheral nerve entrapment, and bilateral occipital neuralgia.

In a statement dated March 4, 1995, appellant related that she felt a strain in her left shoulder after lifting four boxes but that she did not realize that the lifting caused the spasms in her shoulder until questioned by her physician.

In a form report dated March 10, 1995, a physician noted the history of appellant's injury as sudden left arm pain after lifting boxes overhead. The physician diagnosed a cervical disc problem at C5-6 and C6-7 and checked "yes" that the condition was caused or aggravated by employment.

In a report dated March 29, 1995, Dr. Oliver D. W. Grin, a Board-certified neurosurgeon and appellant's attending physician, noted that appellant related that on February 18, 1995 she lifted boxes at work and had severe cervical and left arm pain the following day. Dr. Grin diagnosed left C7 and right C6 radiculopathy and noted that findings on a magnetic imaging resonance study (MRI) supported his diagnosis.

The record indicates that on April 14, 1995, appellant underwent a discectomy at C5-6 and C6-7 with removal of epidural fragments on the right at C5-6 and the left at C6-7 and an anterior interbody fusion at C5-6 and C6-7. A medical history taken upon appellant's admission to the hospital on April 14, 1995 lists the history of injury as appellant "lifting a box over her head on February 18, 1995."

By letter dated April 15, 1995, the employing established controverted appellant's claim.

In a report dated April 27, 1995, Dr. Grin noted that appellant underwent "an anterior cervical discectomy and fusion on April 14, 1995" and should remain off work until May 9, 1995.

By letter dated May 2, 1995, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant. Specifically, the Office requested that appellant provide details, regarding the claimed injury, including an explanation of her delay in reporting the injury and why she told Dr. Kidwai on February 24, 1995 that she did not remember an injury that would cause her symptoms. The Office further inquired about appellant's prior neck injury in 1991.

In a form report dated May 15, 1995, Dr. Grin listed the history of injury as appellant experiencing cervical and bilateral arm pain which "began on February 18, 1995 after lifting boxes at work" and became severe the following day. Dr. Grin diagnosed cervical radiculopathy treated with an anterior cervical fusion and found that appellant was totally disabled from March 28, 1995 to the present and could return to work on approximately May 22, 1995.

By letter received by the Office on May 26, 1995, appellant related that on February 18, 1995 she stood on a ladder and removed 4 boxes weighing approximately 30 pounds each from the shelf above her head to the top of a safe. Appellant stated that she "felt a twinge in my left shoulder and grabbed my arm. I felt dizzy and clammy." She related that she got a clerk to load

the boxes into a cart. Appellant stated that the next morning she tried to get up but that her left arm would not move and when she pulled it she had spasms in her left shoulder and back. She indicated that she immediately went to the emergency room. Appellant stated that she did not report the injury, because she did not “know what caused it until I talked to the doctor.” She further related that she was in severe pain and on strong pain medication. Appellant stated that in 1991 she had a pinched nerve in her arm after falling off her bicycle.

By decision dated June 7, 1995, the Office denied appellant’s claim on the grounds that she did not establish a causal relationship between the injury and the claimed condition. In the accompanying memorandum to the Director, incorporated by reference, the Office found that the evidence supported a finding that appellant sustained an injury on February 18, 1995, in the performance of her work duties, but that the medical evidence did not establish that the injury caused her cervical radiculopathy and disc herniation at C5-6 and C6-7.

By letter received by the Office on July 3, 1995, appellant requested reconsideration of her claim.

In support of her request for reconsideration, appellant submitted a report dated June 20, 1995 from Dr. J. D. Maskill, a specialist in emergency medicine, who stated that he initially treated appellant on February 24, 1995, at which time she related a history of lifting boxes overhead at work on the prior Saturday and noticing “a sudden onset of pain in the neck, shoulder and left arm associated with numbness and tingling into the left hand.” Dr. Maskill noted that an MRI revealed the presence of a right-sided disc protrusion at C5-6 and C6-7. Dr. Maskill stated, “It is my clinical impression that the disc herniation was caused by strenuous overhead lifting and the pressure on the cervical disc caused its herniation.”

Appellant further submitted a report dated June 21, 1995 from Dr. Grin, who related that he reviewed the history provided by appellant in his initial evaluation on March 29, 1995. Dr. Grin stated:

“This clearly outlines an incident on February 18, 1995, in which you were lifting boxes at work. The next day you developed your symptoms. This proximity of the lifting incident to the onset of your symptoms, in my mind, establishes a relationship between the work activity and your development of the cervical radiculopathy.”

Dr. Grin further found that, regarding appellant’s cervical discectomy on April 14, 1995, “the epidural fragments found at the time of surgery are very consistent with [appellant’s] reported history and reported injury.”

In a decision dated July 18, 1995, the Office denied appellant’s request for reconsideration, on the grounds that the evidence submitted was insufficient to warrant modification of the prior decision. In the accompanying memorandum to the Director, the Office found that appellant had not established the occurrence of an employment incident on February 18, 1995, due to inconsistencies in the factual evidence.

The Board finds that the case is not in posture for a decision.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> 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 timely filed within the applicable time limitation period of the Act<sup>2</sup> and that an injury was sustained in the performance of duty.<sup>3</sup>

In a traumatic injury claim, in order to determine whether an employee actually sustained an injury in the performance of duty, it must first be determined whether "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. 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.<sup>4</sup>

In the present case, there is no dispute that appellant is a federal employee and that she timely filed a claim for compensation benefits. The Office, in its June 7, 1995 decision, determined that the February 18, 1995 employment incident occurred as alleged, but found that appellant did not establish that her claimed conditions resulted from the employment incident. By decision dated July 18, 1995, however, the Office denied appellant's request for reconsideration, after finding that the evidence did not establish the occurrence of an employment incident on February 18, 1995.

With regard to the second Office finding, the Board finds that there is insufficient evidence in the record to refute appellant's contention that the incident occurred as described on the claim form. As previously held by the Board, 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.<sup>5</sup> The statement from Mr. Martinue, appellant's coworker, does not contradict appellant's version of the facts as he merely indicated that he did not remember her mentioning a shoulder problem. Appellant related in her statement that she did not mention the pain in her arm and shoulder on February 18, 1995, because she did not know the cause of the problem. The record does indicate that appellant informed Dr. Kidwai on February 24, 1995 that she did not recall any trauma which caused her symptoms. However, appellant has consistently explained that she did not connect her arm and shoulder pain to her work activities on February 18, 1995, until later questioned by her physician. There is no strong evidence refuting appellant's description of the facts and circumstances surrounding the February 18, 1995 employment incident. Thus, the Board finds that the February 18, 1995 incident occurred at the time, place and in the manner alleged.

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>3</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>4</sup> *Robert J. Krstyen*, 44 ECAB 227 (1992).

<sup>5</sup> *See Robert A. Gregory*, 40 ECAB 478 (1989).

The issue presented, therefore, is whether appellant has submitted sufficient medical evidence to meet her burden of proof in establishing that she sustained cervical radiculopathy and a disc herniation at C5-6 and C6-7 due to the February 18, 1995 employment incident. The Board finds that appellant has submitted sufficient medical evidence to require further development of the case.

In a report dated June 21, 1995, Dr. Grin, a Board-certified neurosurgeon and appellant's attending physician, related that the proximity of appellant's symptoms to her lifting at work on February 18, 1995 "establishes a relationship between the work activity and [her] development of the cervical radiculopathy." Dr. Grin further found that appellant's discectomy on April 14, 1995 revealed epidural fragments consistent with the related history of injury.

In a report dated June 20, 1995, Dr. Maskill, a specialist in emergency medicine, related that he initially treated appellant on February 24, 1995 at which time she related a history of lifting boxes overhead at work on the prior Saturday and developing pain in her neck, shoulder and left arm and numbness in her left hand. Dr. Maskill diagnosed a right-sided disc protrusion at C5-6 and C6-7. Dr. Maskill stated, "It is my clinical impression that the disc herniation was caused by strenuous overhead lifting and the pressure on the cervical disc caused its herniation."

Although the reports of Drs. Grin and Maskill do not contain sufficient rationale to discharge appellant's burden of proving by the weight of the reliable, substantial and probative evidence that her cervical radiculopathy and disc herniation at C5-6 and C6-7 are causally related to the February 18, 1995 employment incident, they raise an uncontroverted inference of causal relationship sufficient to require further development of the case record by the Office.<sup>6</sup> The case will therefore be remanded to the Office. After such further development as the Office deems necessary, it should issue an appropriate decision.

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<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

The decisions of the Office of Workers' Compensation Programs dated July 18 and June 7, 1995 are hereby set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.  
February 5, 1998

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member