

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BENJAMIN D. PRICE, SR. and U.S. POSTAL SERVICE,  
POST OFFICE, New Orleans, La.

*Docket No. 96-1127; Submitted on the Record;  
Issued February 6, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained a lower back sprain on May 31, 1995 in the performance of duty, causally related to factors of his federal employment.

On June 27, 1995 appellant, then a 54-year-old electronic technician, filed a claim alleging that on May 31, 1995 he sprained his lower back while repairing a flat sorter. Appellant stopped work on June 2, 1995 at 2:00 p.m. and returned on June 27, 1995. Appellant's supervisor, Robert Freeman, indicated on the reverse of the claim form that it was unknown whether appellant was injured in the performance of duty.

In an emergency room report dated June 4, 1995, it was indicated that appellant sought treatment for back strain because he pulled his back out while "getting in and out of [a] truck." Appellant was diagnosed with lower lumbar muscle strain after it was again noted that onset was "after getting into [a] truck."

In a statement dated June 27, 1995, appellant indicated that his problem began on May 31, 1995 while he was working on a flat sorter. Appellant stated that when he climbed into the machine "I felt a sting in my back; I continued to work my tour." He stated that he then experienced back pain on June 1, 1995 and that by June 2, 1995 he was unable to report to work due to very sharp pains in his lower back. Appellant indicated that he was unable to stand on June 4, 1995 and was taken to the emergency room to receive treatment for a lower lumbar strain.

Appellant's supervisor subsequently indicated that appellant did not inform him of the injury until appellant returned to work on June 27, 1995. He further stated that he talked to appellant on June 15, 1995 and was not informed of the injury.

In a report dated July 18, 1995, Dr. David St. Germaine, appellant's treating physician and a Board-certified internist, recorded a history from appellant that he "pulled his back while

at work getting in and out of [a] truck.” He diagnosed lumbosacral strain and stated that he did not believe the condition found was caused or aggravated by the employment activity described.

In a statement dated July 25, 1995, appellant indicated that he reported his injury to his supervisor on June 2, 1995 and completed the required forms within the proscribed time period on June 27, 1995. He further indicated that he injured his back while repairing a flat sorter on May 31, 1995 and that he told this to the emergency room physician, but that the emergency room was busy. He stated that there was pain within the first 36 hours and that within 48 to 72 hours of the injury he could not stand or walk for any distance. He stated that he did not seek treatment immediately because he did not experience pain within the first 72 hours which would require professional treatment.

In a decision dated August 25, 1995, the Office rejected the claim because fact of injury was not established. In an accompanying memorandum, the Office noted appellant failed to meet his burden that his injury occurred at the time, place and in the manner alleged. In support, the Office noted that history given by appellant supporting that his injury occurred while repairing a flat sorter conflicted with the history record by Dr. St. Germaine and the emergency room report of June 4, 1995 which indicated that the injury resulted from appellant’s getting in and out of a truck. The Office indicated that doubt was further cast because appellant did not file his claim for almost a month after the injury.

Appellant subsequently requested reconsideration. In support, appellant submitted a report from Dr. St. Germaine indicating that he treated him for diabetes. Appellant also submitted a September 13, 1995 statement from Joe Duchense, III indicating that appellant told him on the evening of May 31, 1995 that he injured his back while working on the flat sorter machine. Finally, appellant submitted a leave request form dated June 2, 1995 indicating that he required sick leave.

In a decision dated October 3, 1995, the Office reviewed the merits of the case and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In the accompanying memorandum, the Office indicated that “the medical evidence still fails to include a medical report which includes: (1) History of injury and given by Mr. Price; (2) Detailed description of findings; (3) Results of all x-ray and laboratory tests; (4) Diagnosis and clinical course of treatment followed; and (5) The physician’s opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.”

Appellant again requested reconsideration. In support, he submitted a September 19, 1995 letter from Dr. St. Germaine indicating that he first treated appellant for low back pain on June 6, 1995. He noted subsequent treatment on June 14, 26 and August 7, 1995. Finally, he stated that appellant “apparently injured his back repairing a flat sorting machine at the main post office.”

In a decision dated October 24, 1995, the Office reviewed the merits of the claim and found that the evidence submitted in support of the application was not sufficient to warrant modification of the prior decision. In an accompanying memorandum, the Office found that

Dr. St. Germaine's September 19, 1995 letter was unconvincing as he failed to explain the change in history recorded and failed to relate appellant's condition to the injury history.

The Board finds that appellant has failed to establish that he sustained an injury on May 31, 1995 in the performance of duty, causally related to factors of his federal employment.

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, 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.<sup>2</sup> These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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.<sup>4</sup> To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>5</sup> 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>6</sup>

In the present case, appellant has not met his burden to establish that the injury occurred at the time, place and in the manner alleged. Appellant asserted that he suffered a lower back sprain on May 31, 1995 while working on a flat sorter. Appellant's assertion, however, was directly contradicted by a June 4, 1995 emergency room report which indicated that he injured his back "getting in and out of [a] truck" and the July 18, 1995 report of Dr. St. Germaine, appellant's treating physician and a Board-certified internist, which also indicated that appellant injured his back "getting in and out of [a] truck." Dr. St. Germaine further opined that he did not

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>6</sup> *Id.*

believe appellant's condition was caused or aggravated by the employment activity described. Appellant attempted to resolve the contradiction of evidence with a bolstering statement from Joe Duchnese, III and a September 19, 1995 letter from Dr. St. Germaine stating that appellant "apparently injured his back repairing a flat sorting machine." Because Dr. St. Germaine's September 19, 1995 letter is equivocal it is entitled to little weight.<sup>7</sup> Moreover, the bolstering letter from Joe Duchnese, III fails to resolve the inconsistency in the evidence regarding the occurrence of appellant's injury. Accordingly, because there are inconsistencies in the facts which cast serious doubt on the veracity of appellant's claim, appellant has failed to establish her *prima facie* case.

The decisions of the Office of Workers' Compensation Programs dated October 24, 3 and August 25, 1995 are hereby affirmed.

Dated, Washington, D.C.  
February 6, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

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<sup>7</sup> *Kenneth J. Deerman*, 34 ECAB 641 (1983).