

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ENRIQUE CRUZ and U.S. POSTAL SERVICE,
POST OFFICE, Fort Worth, Tex.

*Docket No. 96-2364; Submitted on the Record;
Issued May 18, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a knee injury in the performance of duty, as alleged.

The Board has duly reviewed the record in the present appeal and finds that appellant has met his burden of proof to establish that he sustained a knee injury in the performance of duty, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim including the fact that the 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.² These are the essential elements of each and every claim regardless of whether the claim is predicated upon a traumatic injury due to one single incident or an occupational disease due to events occurring over a period of time.³ With respect to the factual component of a claim, an injury does not have to be confirmed by eyewitnesses in order to establish the fact that the 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.⁴ An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ The Office's regulations clarify that a traumatic injury refers to an injury caused by a specific event or incident or series of events or incidents occurring within a single workday or work shift whereas occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or shift. *See* 20 C.F.R. §§ 10.5(a)(15), (16).

⁴ *Thelma S. Buffington*, 34 ECAB 104 (1982); *Theodore W. Manginen*, 15 ECAB 57 (1963).

doubt upon the validity of the claim.⁵ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the 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.⁶ 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.⁷

Appellant, a 55-year-old letter carrier, filed a claim for a knee condition, as a result of pushing a cart down a ramp, which struck his knee when he attempted to catch it from falling. Appellant gave notice of his injury to the supervisor of customer service, who signed the reverse side of appellant's claim form on May 14, 1996. The supervisor noted that appellant had mistakenly written on the claim form, the date of injury as "May 21, 1996," which was actually one week from that date on May 14, 1996. The supervisor also noted that appellant did not want treatment on that date, which was consistent with the statement at the bottom of the claim form, appellant signed and dated May 14, 1996. She indicated that appellant initially described the injury as occurring when a falling tray hit his knee, and later that day identified the cart as the item which struck him, with a more precise statement the following day that the rod on the cart struck him. The supervisor noted that when appellant informed her of the injury on May 14, 1996, he noted that it happened the prior day, but that he did not report it at that time because he did not think it would bother him.

Appellant stopped work and obtained treatment from Dr. Robert H. Shaw, a family practitioner, on May 16, 1996. In three separate duty status reports dated May 16, 18 and 24, 1996, Dr. Shaw diagnosed a contusion and sprain based on findings of swelling, tenderness and limited range of motion of the left knee. He noted with check mark that the injury corresponded to the history of injury provided on the front side of the duty status report, namely that a rod of a cart struck his knee on May 13, 1996. Appellant returned to work after two weeks off from work.⁸

By decision dated June 28, 1996, the Office denied appellant's claim on the basis of the factual inconsistencies of his claim.

The Board notes that appellant was consistent in identifying a cart as the object which struck him when he attempted to keep it from falling. Appellant's statements that he was hit by a tray or a rod on a cart are consistent with the general statements that he was hit by a cart. In addition, the fact that he completed the claim form using an incorrect date of injury does not render the claim factually deficient. The date of May 21, 1996 which he wrote as the date of

⁵ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

⁶ *See Dorothy Kelsey*, 32 ECAB 998 (1981).

⁷ *Thelma S. Buffington*, 34 ECAB 104 (1982).

⁸ The Office advised appellant of the deficiencies of his claim by letter dated June 7, 1996, and allotted appellant 20 days to provide further information to correct the deficiencies of his claim. The Board notes that Office's regulations provide for 30 days to submit required evidence to one's burden of proof; *see* 20 C.F.R. § 10.110(b).

injury was one week after the actual date he reported the injury. As to the date the injury occurred, the supervisor's statements that he was injured the day before, on May 13, 1996, is consistent with the dates provided on the duty status reports signed by Dr. Shaw. Accordingly, the evidence establishes that on May 13, 1996 appellant was struck by a cart at work.

Furthermore, the duty status reports completed by Dr. Shaw establish that as a result of the May 13, 1996 incident at work, appellant sustained a contusion and sprain of the left knee. In his reports, Dr. Shaw reported findings of swelling, tenderness and limited range of motion of the left knee caused by the work incident. Accordingly, the Board finds that the Office improperly denied appellant's claim for a knee injury.

The decision of the Office of Workers' Compensation Programs dated June 28, 1996 is hereby reversed.

Dated, Washington, D.C.
May 18, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member