

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of FRANCIS DASCOLI and U.S. POSTAL SERVICE,  
POST OFFICE, Newark, NJ

*Docket No. 98-306; Submitted on the Record;  
Issued August 11, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on December 11, 1996.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on December 11, 1996.

An employee who claims benefits under the Federal Employee's Compensation Act<sup>1</sup> 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.<sup>2</sup> 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 or her subsequent course of action.<sup>3</sup> An employee has not met his or her 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.<sup>4</sup> 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.<sup>5</sup> However, an

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

<sup>3</sup> *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

<sup>4</sup> *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>5</sup> *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

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>6</sup>

In the present case, appellant filed a traumatic injury claim (Form CA-1) on May 14, 1997 alleging that he sustained an employment-related right knee injury on December 11, 1996. Regarding the cause of the injury, appellant stated:

"I was counseling employee Rita Evans regarding absence from work floor. I was bending at the time. Another employee called to me and I turned to see who was calling, and twisted my body around. When I turned back to continue my conversation, my right foot which had become firmly rested against the bottom of Ms. Evans' chair became wedged."

Appellant noted that his right knee buckled and he then fell forward onto the employee who he had turned to address. By decision dated October 8, 1997, the Office denied appellant's claim on the grounds that he did not establish fact of injury.

The Board notes that there are such inconsistencies in the evidence as to cast doubt on the occurrence of the claimed December 11, 1996 employment incident. Appellant did not explain why he waited more than six months to report the occurrence of the claimed December 11, 1996 incident. Appellant alleged that he reported the incident at the time of its occurrence, but he did not submit sufficient evidence to support this claim.<sup>7</sup> His supervisor stated that appellant did not report the occurrence of a December 11, 1996 injury and that he continued to work on and after that date. Appellant indicated that there were no witnesses to the December 11, 1996 incident, but he did not explain this assertion in light of the fact that there were two other people present at the time. He did not explain why he waited more than six months to seek medical treatment for his condition. Appellant had extensive treatment for his right knee prior to December 11, 1996, including a partial medial meniscectomy and chondroplasty performed on September 30, 1996. He first sought treatment for his alleged December 11, 1996 injury on May 22, 1997 at which time he reported to his physician that on December 11, 1996 he was "twisting his body while working." Appellant did not stop work at any point after the alleged December 11, 1996 injury and he did not provide any explanation for his ability to work without apparent difficulty. The Office requested that appellant clarify a number of factual matters regarding his claim, but appellant did not adequately respond to this request.

For these reasons, appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on December 11, 1996.

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<sup>6</sup> *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

<sup>7</sup> In July 1997, the record was supplemented to include a statement, dated December 11, 1996, in which appellant stated, "After assigning Ms. McKoy to pitch out-of-state, I turned back around to Ms. Evans and bent closer so as to keep the conversation between us. In doing so, I tripped over my feet. My right knee, of which I recently had an operation, is somewhat weak and very sore. It gave out and I started to fall forward, into her." Appellant apparently prepared this statement in response to a potential complaint by Ms. Evans and the statement does not contain any clear indication that he had claimed or reported an employment injury on or around December 11, 1996. Moreover, the description of the claimed incident differs somewhat from that provided in the May 14, 1997 Form CA-1.

The decision of the Office of Workers' Compensation Programs dated October 8, 1997 is affirmed.

Dated, Washington, D.C.  
August 11, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member