

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ANITA R. YU and U.S. POSTAL SERVICE,  
POST OFFICE, Milan, MI

*Docket No. 98-1690; Submitted on the Record;  
Issued December 21, 1999*

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DECISION and ORDER

Before GEORGE E. RIVERS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On December 17, 1997 appellant, then a 57-year-old city mail carrier, alleged that on that day she sustained an injury in the performance of duty when she was hit by her supervisor's car in the parking lot.<sup>1</sup> Appellant noted that she had pain in her left side, back, thigh, ribs and right knee. The employing establishment stated that appellant's "accident occurred as both employees' were entering ... parking lot prior to each beginning their tours." Further, the employing establishment noted that the supervisor did not acknowledge the accident, noting that he saw appellant fall before his vehicle, but that he saw no signs of contact nor sounds associated with such contact.

In support of her claim, appellant submitted a hospital discharge sheet dated December 17, 1997 noting that she should refrain from working for three days. The report also noted that appellant could work sitting down and that she should not lift heavy things for three days.

By letter dated January 13, 1998, the Office of Workers' Compensation Programs advised appellant that she needed to submit additional evidence in support of her claim including a detailed medical report with an opinion regarding the relationship of any continuing disability and her alleged work-related injury.

In a medical report dated December 17, 1997, Dr. Carol Schultz, appellant's attending physician and Board-certified in emergency medicine, related appellant's history of injury, noting that on that day she was hit by a car on the left side and that she fell backwards on her back and buttocks, and that, after attempting to work, she began to feel pain in her left back into

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<sup>1</sup> The supervisor apparently apologized to appellant for hitting her with his car.

her mid thigh above her knees. Appellant noted pain in her right knee as well. X-rays revealed some spondylolisthesis at the L4-5 junction, grade-II. A computerized axial tomography scan did not reveal any acute fracture but did reveal grade II spondylolisthesis at L4-5 which Dr. Schultz felt was “most likely chronic.” She advised appellant of her condition and advised her to refrain from heavy lifting and excessive walking for three days. Dr. Schultz added that appellant left the emergency room in good condition.

In a narrative report dated February 1, 1998, appellant stated that on December 17, 1997 she was knocked down by the front bumper of her supervisor’s car as he drove into the employee’s parking lot as she was crossing to enter the building. The bumper hit her left lower back, causing her to hit the ground on the left side of her back. After appellant attempted to work, she began to feel pain from her back to her left thigh. She further noted pain in her ribs and knees, on her back left side as well as pain in her slightly arthritic left knee. Appellant was initially ordered off work but was allowed to work limited duty (sitting down) due to the needs of the employing establishment. After a week’s vacation, appellant returned to her normal route and has worked without pain since that time.

In a decision dated February 12, 1998, the Office denied appellant’s claim on the grounds that a medical condition resulting from the incident was not established.

The Board finds that appellant has failed to establish that she sustained a compensable injury on December 17, 1997.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>2</sup>

In this case, although the Office found that the incident occurred as alleged, it determined that appellant had failed to establish that a compensable injury occurred as a result of the incident. Dr. Schultz, appellant’s attending physician, stated that appellant’s x-rays were normal but that a computerized tomography scan revealed a chronic spondylolisthetic condition of the spine. However, he failed to establish that appellant’s spondylolitis was either caused or aggravated by her December 17, 1997 incident.

Accordingly, appellant failed to carry her burden of proof in this case that her medical condition was sustained while in the performance of duty.

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<sup>2</sup> *Victor J. Woodhams*, 41 ECAB 345, 351-52 (1989).

The February 12, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, D.C.  
December 21, 1999

George E. Rivers  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member