

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LLOYD W. SFAKIANOS and U.S. POSTAL SERVICE,  
POST OFFICE, Memphis, Tenn.

*Docket No. 97-2034; Submitted on the Record;  
Issued March 19, 1999*

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DECISION and ORDER

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

The issue is whether appellant sustained an injury in the performance of duty, as alleged.

The Board has duly reviewed the case record and finds that appellant did not sustain an injury in the performance of duty, as alleged.

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>1</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>2</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 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 serious doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>3</sup> However, an employee's statement 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>4</sup>

On February 5, 1997 appellant, then a 53-year-old modified mail handler, filed a claim for a traumatic injury, Form CA-1, alleging that on November 8, 1996, he felt a pain in his arm

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<sup>1</sup> *Robert J. Krstyan*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

<sup>2</sup> *Id.*

<sup>3</sup> *Linda S. Christian*, 46 ECAB 598, 600-01 (1995); *Carmen Dickerson*, 36 ECAB 409, 415 (1985).

<sup>4</sup> *Linda S. Christian*, *supra* note 3 at 601; *Virgil F. Clark*, 40 ECAB 575, 584-86 (1989).

while he was pushing an 80-pound hamper full of letters and flat mail into the dumper. Appellant stated that he felt pain in his left elbow with pain radiating down the top and bottom of his arm and up the arm to the left shoulder. Appellant's supervisor stated that appellant did not report the incident on November 8, 1996 because he did not think it was anything to cause concern at the time. In a report dated November 14, 1996 from the Memphis Orthopaedic Group, the group stated that appellant complained of left shoulder pain with radiation over the anterior aspect of the arm to the elbow and remembered no discrete injury. The group stated that appellant's pain had been present for the last week. The group performed a physical examination and reviewed an x-ray of the cervical spine showing mild cervical spondylosis at C4-5 and C5-6 and minimal degenerative changes of the acromioclavicular joint. The group diagnosed rotator cuff tendinitis and biceps tendinitis in the left upper extremity and subacromial bursitis of the left shoulder. The group treated appellant several times from November 21, 1996 through April 24, 1997. In the April 24, 1997 progress note, the group stated that appellant informed them that he had a traumatic injury which began following his pushing an approximately 400-pound container of mail into a bin. The group stated that the incident could "quite definitely" produce traumatic lateral epicondylitis. The group also stated that appellant's epicondylitis had continued and been aggravated by appellant's repetitive lifting occupation. In an attending physician's report, Form CA-20, dated February 13, 1997, Dr. Keener B. Ragsdale, a Board-certified orthopedic surgeon, from the Memphis Orthopaedic Group, reiterated the diagnoses of bursitis and tendinitis diagnosed by the group, noted there was no discrete injury and checked the "yes" box stating that appellant's conditions were work related and were "aggravated by repetitive lifting, pulling and pushing."

In a response to the Office of Workers' Compensation Programs April 3, 1997 request for information, appellant explained that he did not report his injury until several weeks after it happened because he was afraid he might be fired given that, in the past, management told him he was having too many injuries. Appellant stated that when he reported the incident to his supervisor, his supervisor delayed in filing the notice and appellant did not obtain a Form CA-1 until he went to the injury compensation representative. Appellant stated that the hamper he pushed weighed 400 pounds. Appellant stated that he did not inform his physician that his injury was work related until he decided to file a workers' compensation claim.

By decision dated May 8, 1997, the Office denied the claim, stating that the evidence did not establish that appellant sustained an injury due to the claimed event.

In the present case, the April 24, 1997 progress note by the Memphis Orthopaedic Group corroborates that appellant sustained a traumatic injury when he pushed an approximately 400-pound mail container into a bin but it does not reference the date. Also, it detracts from appellant's credibility that he waited almost three months before telling a physician his injury was work related. In the group's note dated November 14, 1996, the group stated there was no discrete injury. In her February 13, 1997 CA-20, Dr. Ragsdale also stated that there was no discrete injury and stated that appellant's bursitis and tendinitis resulted from repetitive lifting, pulling and pushing at work. In the April 24, 1997 note, the orthopedic group suggested that appellant might have epicondylitis which is different from the previous diagnoses.

Due to the fact that the medical evidence does not mention appellant had a hamper incident until April 24, 1997 and then does not mention the date it occurred and the fact that the evidence shows that appellant waited nearly three months to report the incident to his supervisor,

appellant has not established that the fact of injury occurred, as alleged. Although there do not have to be eyewitnesses to the injury, there must be supporting evidence.<sup>5</sup> The evidence in this case is insufficient to corroborate the alleged November 16, 1996 hamper incident. Even if the fact of injury had been established, however, appellant did not submit any rationalized medical opinion establishing a causal relationship between his shoulder and elbow condition and the alleged November 14, 1996 employment injury. Dr. Ragsdale's checking the "yes" box on the CA-20 dated February 13, 1997 to indicate that appellant's tendinitis and bursitis is work related and stating that it resulted from repetitive lifting, pushing and pulling is not sufficiently rationalized to establish the requisite causation.<sup>6</sup> The orthopedic group's April 24, 1997 progress note that appellant's pushing a hamper could produce epicondylitis is speculative and therefore is not probative.<sup>7</sup> Although the Office provided appellant with the opportunity, appellant failed to submit sufficient evidence to establish his claim. Appellant has therefore not met his burden of proof.

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

Dated, Washington, D.C.  
March 19, 1999

Willie T.C. Thomas  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>5</sup> *Linda S. Christian, supra* note 3 at 600-01.

<sup>6</sup> *See Lester Covington, 47 ECAB 539, 542 (1996).*

<sup>7</sup> *See Joseph H. Surgener, 42 ECAB 541, 548 (1991).*