

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARMEN L. SANTOS and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 98-1186; Submitted on the Record;
Issued November 23, 1999*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant sustained an employment injury on May 12, 1994 as alleged.

On February 17, 1995 appellant, a letter carrier, filed a claim asserting that she sustained a traumatic back injury in the performance of her duties on May 12, 1994 when she picked up four buckets of mail at one time. Appellant's supervisor indicated on the back of the claim form that at no time did appellant notify management that she got hurt. Appellant indicated that she continued working with pain because she did not want to lose her job as a part-time flexible carrier.

To support her claim appellant submitted medical documentation showing that she received medical care on July 12, 1994 for severe muscle spasm in her back and that she received ongoing medical attention thereafter, but none of the medical evidence mentioned any connection to appellant's federal employment until a February 10, 1995 report by Dr. Aldo F. Berti, a Board-certified neurosurgeon, who reported that on May 12, 1994 during an inspection appellant was carrying buckets and developed left low back pain that extended into the left lower extremity and, later, to the left upper extremity.

In a decision dated July 15, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence of record failed to demonstrate a causal relationship between the injury and the claimed condition or disability.

Appellant requested reconsideration and submitted a December 17, 1995 report from her attending physician, Dr. Delores Macksoud, who reported that appellant suffered an accident on May 12, 1994 when she was lifting heavy buckets of mail while performing her city letter carrier duties. She stated that appellant went to the emergency room, where she was diagnosed with severe muscle spasm in her back and lumbago and was ordered not to lift any heavy objects. The emergency room physician treated her with muscle relaxants and told her to rest for seven

days and referred her to Dr. Macksoud. She reported that she had seen appellant on almost a monthly basis from July 20 to December 15, 1995 due to her chronic low back pain because of the job injury.

In a decision dated March 5, 1996, the Office reviewed the merits of appellant's claim and found that the evidence submitted was insufficient to warrant modification of the prior decision. The Office found, however, that the delay in reporting the injury, in documenting a history of injury in the medical record and in seeking initial medical treatment was not consistent with the injury as claimed. The absence of documentation of the initial as well as continued medical treatment, the expansion of symptoms to areas unaffected by the traumatic injury claimed and the failure to document objective test results further conflicted, the Office found, with the notion of a job-related traumatic injury.

Appellant again requested reconsideration and submitted a May 15, 1996 report from Dr. Macksoud, who reported that appellant had been suffering from chronic low back pain and that her symptoms began, according to appellant's history, while carrying and lifting mail buckets at work on May 12, 1994. Noting that appellant had evidence of lumbar degenerative disc disease and that her symptoms had been present since the accident at work on May 12, 1994 Dr. Macksoud reported that obviously appellant's work initiated and exacerbated her symptoms and that there was a direct and causal relationship between appellant's symptoms and this incident.

In a decision dated August 14, 1996, the Office reviewed the merits of appellant's claim and modified its prior decision to find that fact of injury was not established. The Office found that late notification of injury, lack of confirmation of injury, continuing to work following an injury, failure to obtain medical treatment for two weeks and not recounting a history of employment injury to the physician all served to cast doubt upon the validity of the claim.

Appellant again requested reconsideration and submitted a September 18, 1996 report from Dr. Macksoud, who reported in part as follows:

“[Appellant's] monthly visits and these monthly reports since July 20, 1994 are evidence that this patient indeed has a medical problem. It has been my opinion that she should not return to her past regular duties which consisted in driving a mail truck, delivering mail, lifting and carrying mail bags and boxes. If I did not mention a direct injury in my notes, it must have been an error of omission and I would have to apologize to the patient for this. I do have an independent recollection from the beginning of her treatments that her job was the cause of her complaints and that there is a direct causal relationship even if you want to deny this.”

In a decision dated January 6, 1998, the Office reviewed the merits of appellant's claim but denied modification of its prior decision. The Office found that Dr. Macksoud's report was insufficient to establish a traumatic injury on May 12, 1994 in the manner alleged. The Office noted that Dr. Macksoud provided no description of the injury and related appellant's complaints only to “her job.”

The Board finds that the evidence of record is insufficient to establish that appellant sustained an employment injury on May 12, 1994, as alleged.

A person who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the essential elements of her claim, including the fact that she sustained an injury at the time and place and in the manner alleged.² 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 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.³

The Office correctly found that the circumstances in this case, cast doubt as to whether appellant sustained an employment injury on May 12, 1994 as alleged. Some of these circumstances may be explained: Appellant did not report an injury of May 12, 1994 to her supervisors but asserted that she continued working with pain because she did not want to lose her job as a part-time flexible carrier. That she continued to work and did not seek immediate medical attention is not necessarily inconsistent with the injury alleged. There is no eyewitness statement or other contemporaneous confirmation of an injury, but this fact alone is not fatal to appellant's claim. The most significant circumstance in this case, however, is appellant's apparent failure to disclose the May 12, 1994 employment injury to her medical care providers. Although she went to the emergency room on July 12, 1994 and received almost monthly care from Dr. Macksoud for the rest of the year, there is a conspicuous lack of any reference to an employment-related injury until February 10, 1995. She explained in her September 18, 1996 report, that her failure to mention a direct injury in her notes "must have been an error of omission" as she had an independent recollection from the beginning of appellant's treatments that her job was the cause of her complaints. Although helpful, Dr. Macksoud's explanation tends to support only that appellant reported some history of an unspecified employment relationship. It does not support that she related having sustained an injury at the time, place and in the manner subsequently alleged.

Appellant may have, in fact, sustained an injury on May 12, 1994 as alleged, but the matter is one of evidence and the evidence in this case, raises sufficient doubt concerning the validity of the claim that appellant has not met her burden of proof.

¹ 5 U.S.C. §§ 8101-8193.

² *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

³ *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

The January 6, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
November 23, 1999

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member