

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DELPHYNE L. GLOVER and U.S. POSTAL SERVICE,
POST OFFICE, New York, NY

*Docket No. 98-713; Submitted on the Record;
Issued October 22, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an injury on July 9, 1996 as alleged.

On July 11, 1996 appellant filed a claim for an injury to her back sustained on July 9, 1996 when a swinging door she was exiting hit her in the back. On July 26, 1996 the employing establishment's manager of customer services submitted a statement controverting appellant's claim:

"I investigated [appellant's] claim and conclude that it could not have happened as she indicated. The doors do not swing out more than a few inches due to the hinge tension and the door edge flaps. The vertical edge flaps on each door meet and overlap. The doors do not swing in synchronization so the flaps hit each other and stop the doors from swinging on return. In addition, I walked through each door singly and simultaneously. I went through slowly and observed no return swing. I went through quickly, slamming the doors back with great force so that they strongly and loudly banged the side wall door stops. I then stopped immediately upon crossing the threshold (walking in a normal size step) to determine if the doors could hit me on return swing. The return was no more than six inches and carried no force due to the hinge tension and flaps. There was no potential for hitting or injuring me.

"[Appellant] subsequently stopped by and twice reenacted the incident. Each time she walked slowly through both doors simultaneously, exerting no extra push upon the doors. She continued walking. She did not stop. I observed her from both front and rear each time. There was no return swing and no potential for being hit by the door.

"[Appellant] expressed puzzlement, admitting that the doors could not have hit her in that scenario. Upon further questioning, she specifically stated that she had

walked slowly through the doors and emphatically stated that she had not stopped on the threshold or immediately in front of the doors. She said that she kept walking, as she had demonstrated. In thinking aloud, [appellant] questioned whether she had been hit by something else and not by the door. She then examined the vestibule area and noted that nothing was there then or at the time of the alleged incident. She stated that no person could have hit her or caused her to be hit, because she was alone. There was no one behind her or on the deck at the time.”

By letter dated August 19, 1996, the Office of Workers’ Compensation Programs requested further information from appellant regarding the alleged July 9, 1996 incident, including a statement addressing the employing establishment’s controversion of her claim on the basis that the incident could not have happened as alleged. Having received no reply, the Office, by decision dated September 25, 1996, found that fact of injury was not established.

On August 14, 1997 appellant requested reconsideration and submitted additional medical evidence. By decision dated September 23, 1997, the Office found that the additional evidence was immaterial and not sufficient to warrant review of its prior decision.

Although the Office’s September 23, 1997 decision indicates on its face that it was not a review of the merits of appellant’s claim, perusal of this decision establishes that it did in fact constitute a merit review. This decision evaluates not only the arguments of appellant’s attorney made in the August 14, 1997 request for reconsideration, but also the weight of evidence, especially the statements of the employing establishment regarding appellant’s alleged injury, considered in the Office’s September 25, 1996 merit decision. As the September 23, 1997 decision of the Office in fact reviewed the merits of appellant’s claim, the Board will do so on the present appeal.

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. 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. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹

The Board finds that appellant has not established that she sustained an injury on July 9, 1996 as alleged.

Appellant’s claim that she was hit in the back by a swinging door was refuted by the employing establishment’s manager of customer services, who provided an account of her testing of the swinging door in question, which led her to the conclusion that the incident “could not have happened as [appellant] indicated.” Appellant has not rebutted the statements in the manager of customer services’ statement that the doors could not be made to swing back or

¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

rebound more than six inches even when forcefully pushed. In addition, the authorization for medical treatment signed by appellant's supervisor on July 9, 1996 indicates that appellant left the premises at 2:00 p.m., the time of the alleged July 9, 1996 employment injury, but this form does not mention this alleged injury, in either the supervisor's or the physician's section. A report from appellant's attending physician dated July 10, 1996, also does not make any mention of a July 9, 1996 injury or of an injury incurred by being hit by swinging doors. The later medical reports that refer to the alleged July 9, 1996 injury do not outweigh the report completed on the date of this alleged injury. The circumstances of this case cast serious doubt upon the occurrence of a July 9, 1996 injury in the manner alleged by appellant.

The decision of the Office of Workers' Compensation Programs dated September 23, 1997 is affirmed, as modified.

Dated, Washington, D.C.
October 22, 1999

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member