

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORENDA T. CANTY and U.S. POSTAL SERVICE,
POST OFFICE, Washington, DC

*Docket No. 99-1031; Submitted on the Record;
Issued June 2, 2000*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant met her burden of proof in establishing that she sustained an injury in the performance of duty on October 3, 1997.

The Board has given careful consideration to the issue involved, appellant's contentions on appeal and the entire case record. The Board finds that the decision of the hearing representative of the Office of Workers' Compensation Programs dated October 26, 1998 and finalized on October 27, 1998 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the Office hearing representative.¹

¹ In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred. *Elaine Pendleton*, 40 ECAB 1143 (1989). The second component is whether the employment incident caused a personal injury. *John J. Carlone*, 41 ECAB 354 (1989). The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged. *Shirley A. Temple*, 48 ECAB 404, 407 (1997). An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and her subsequent course of action. *Id.*; *Gene A. McCracken*, 46 ECAB 593, 596-97 (1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991). Circumstances such 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 cast doubt on an employee's statements concerning the alleged incident. *Constance G. Patterson*, 42 ECAB 206 (1989). In the instant case, appellant has failed to meet her burden of demonstrating that she actually experienced the employment incident that is alleged to have occurred on October 3, 1997.

The decision of the Office of Workers' Compensation Programs dated October 26, 1998 and finalized on October 27, 1998 is, hereby, affirmed.

Dated, Washington, D.C.
June 2, 2000

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member