

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BESSIE A. GEORGE and U.S. POSTAL SERVICE,  
POST OFFICE, Cincinnati, OH

*Docket No. 99-1132; Submitted on the Record;  
Issued June 6, 2000*

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DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

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

The Board has given careful consideration to the issue involved, the contentions of the parties on appeal and the entire case record. The Board finds that the January 16, 1998 decision of the Office of Workers' Compensation Programs' hearing representative, finalized on January 16, 1998, is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative.<sup>1</sup>

By letter dated July 15, 1998, appellant requested reconsideration of the Office's decision which the Office denied on August 17, 1998 following merit review. She submitted additional evidence including a report from her treating physician, Dr. Bernard R. Bach, a Board-certified orthopedic surgeon, dated March 10, 1998, an affidavit from a coworker, Valerie Pickrum, dated March 23, 1998, a request for notification of absence, Form 3971, dated February 6, 1993, and appellant's undated work sheet for February 5, 1993. In his March 10, 1998 report, Dr. Bach stated that the medical records show that he examined appellant on February 9, 1993 and that she was complaining that she injured her left knee at work on Friday, February 5, 1993. In her March 23, 1998 affidavit, Ms. Pickrum stated that, on February 5, 1993, at 1:30 p.m., after her work shift ended, she drove appellant home because appellant told her that her left knee gave out at work when she tried to put a box of mail in the cage. The request for or notification of absence dated February 6, 1993 shows that appellant requested 152 hours of sick leave from February 6 through March 5, 1993, and her supervisor, Nancy Hamon, signed her approval. In a

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<sup>1</sup> The inconsistencies in the medical and factual evidence as to whether the alleged knee injury occurred on February 5, February 8 or April 5, 1993 and whether it occurred while appellant was pushing carts or twisting a box cast doubt on the credibility of appellant's claim and preclude an award of benefits; *see Linda S. Christian*, 46 ECAB 598, 600-01 (1995); *Mary Joan Coppolino*, 43 ECAB 998, 990-91 (1992).

handwritten note, appellant indicated that Ms. Hamon was the supervisor to whom she reported her knee injury. Appellant's undated work sheet described the nature of her work.

Dr. Bach's March 10, 1998 report is of diminished probative value because his statement that the medical records dated February 9, 1993 show that appellant injured her left knee on that date is inaccurate as the February 9, 1993 medical records do not indicate that appellant sustained a work-related injury but generally state that appellant's left leg gave out. Ms. Pickrum's affidavit dated March 23, 1998 in which she stated that she drove appellant home from work on February 5, 1993 because appellant injured her left knee at work is supportive of appellant's claim but rendered of diminished probative value by the fact that appellant waited five years to obtain the affidavit and is insufficient to counter the inconsistencies in the evidence. On the February 6, 1993 request for notification of absence appellant did not indicate she sustained a work-related injury even though a box for checking continuation of pay was an option listed on the form and appellant had prior experience filing a claim for a work-related injury for which continuation of pay was approved. Appellant's undated work sheet does not address a work-related injury. The evidence appellant submitted did not resolve the inconsistencies in the evidence contemporaneous to her alleged February 5, 1993 employment injury. Therefore, appellant has not established her claim.<sup>2</sup>

The decision of the Office of Workers' Compensation Programs dated August 17 and January 16, 1998 are hereby affirmed.

Dated, Washington, D.C.  
June 6, 2000

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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