

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBRA A. CARTER and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 00-135; Submitted on the Record;
Issued November 7, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on August 11, 1998 as alleged.

Appellant, then a 40-year-old letter carrier, filed a traumatic injury claim on August 12, 1998 alleging that on August 11, 1998 she injured her neck, shoulders, back, arms and hips while performing work duties. Appellant stated: "I was sitting in a swivel rocking chair at a desk writing when someone snuck up behind me and pushed the chair real hard." Appellant did not stop work.

Appellant submitted with her claim an unsigned and undated CA-16 form requesting authorization for treatment and a duty status report dated August 18, 1998 from Dr. Edward Feldman, an attending physician.

In a letter dated August 27, 1998, the Office of Workers' Compensation Programs requested additional evidence from appellant. The Office noted receipt of billing statements and work excuse slips from Dr. Feldman.

By decision dated October 2, 1998, the Office denied appellant's claim on the grounds that she failed to establish that she experienced the claimed incident at the time, place and in the manner alleged.

By letter dated October 23, 1994, appellant, through her representative, requested reconsideration and submitted additional treatment notes from Dr. Feldman. The record reflects that prior to the October 2, 1998 decision, appellant had submitted other medical reports from him to support her claim; however, this evidence was not considered when the Office rendered its October 2, 1998 decision. Appellant previously submitted a report from Dr. Feldman dated August 18, 1998 in which stated that appellant had been involved in a work-related event on August 11, 1998, resulting in multiple injuries. He related that appellant was sitting in an arm-

chair when a coworker bumped into her from behind, which made her jerk forward and noted her complaints of neck and shoulder pain with occasional headaches as a result of the accident. Dr. Feldman found no evidence of fracture or dislocation of the cervical, thoracic or lumbar spine or evidence of spondylolysis or spondylolisthesis; however, he found straightening of the cervical lordosis, five lumbar vertebrae with partial lumbarization of S1 and a severely degenerated disc in the lumbar spine, confirmed by x-ray. Appellant had also submitted a magnetic resonance imaging (MRI) scan of the lumbar spine, which revealed a probable transitional L6 vertebral body with the central bulging of the disc at L5-6. Appellant had further submitted a report from Dr. Feldman dated September 1, 1998 in which he diagnosed sub-acute cervical sprain; sub-acute thoracic sprain; sub-acute lumbosacral sprain; R/O herniated cervical and lumbar discs; R/O carpal tunnel syndrome; R/O tarsal tunnel syndrome and bulging lumbar disc, L5-6 and stated that his objective findings and appellant's subjective complaints were causally related to the employment event of August 11, 1998.

By decision dated January 20, 1999, the Office denied modification of the October 2, 1998 decision on the grounds that appellant failed to provide evidence sufficient enough to prove that she was injured at the time, place and in the manner alleged.

The Board has duly reviewed the case record in the present appeal and finds that the medical evidence is insufficient to meet appellant's burden of proof.

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury."² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

The Office, in determining whether an employee actually sustained an injury in the performance of duty, first analyses whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁴ 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.

¹ 5 U.S.C. §§ 8101-8193 *et. seq.*

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁵ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁶ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.⁷

The Office denied appellant's claim on the grounds that factual deficiencies made it difficult to determine if appellant had been pushed or shaken. The Office also noted that appellant did not provide any witness statements to corroborate her claim. Consequently, the Office found that factual inconsistencies in appellant's account of her injury cast doubt on the validity of the claim.

In this case, appellant's initial description of the the August 11, 1998 employment incident has not been refuted. Whether appellant's chair was pushed, bumped or shaken, the record contains a handwritten note from the coworker describing the incident. Further, appellant sought medical treatment a week after the incident and contemporaneous medical reports contain a history of injury consistent with her account of events. The Board, therefore, finds that the evidence is sufficient to establish that the incident occurred as alleged.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. To establish a causal relationship between the diagnosed condition causing disability and the employment incident, appellant must submit rationalized medical evidence, based on a complete factual and medical background, explaining how the incident resulted in a disabling injury.⁸

In a report dated August 18, 1998, Dr. Feldman advised after examination of appellant and review of x-ray reports that she had been involved in a work-related event on August 11, 1998, resulting in multiple injuries. In a report dated September 1, 1998, he diagnosed sub-acute cervical, thoracic and lumbosacral sprains and a bulging disc at L5-6 and referred to an MRI report, which partly confirmed his findings. Dr. Feldman opined that his objective findings and appellant's subjective complaints were causally related to the accident of August 11, 1998.

Dr. Feldman, however, did not specifically address the cause of the diagnosed conditions. Without any explanation or rationale for the conclusion reached, his report is insufficient to establish causal relationship.⁹ Thus, appellant has not provided the medical evidence necessary

⁵ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

⁶ *Dorothy Kelsey*, 32 ECAB 998 (1981).

⁷ *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

⁸ *James Mack*, 43 ECAB 321 (1991).

⁹ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

to establish that the August 11, 1998 employment incident caused injury to her neck, shoulders, back, arms and hips.

The decision of the Office of Workers' Compensation Programs dated January 20, 1999 and October 2, 1998 are affirmed as modified.

Dated, Washington, DC
November 7, 2000

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member