

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of MOZELLE SWANSON and U.S. POSTAL SERVICE,  
FOX VALLEY POST OFFICE, Aurora, IL

*Docket No. 01-114; Submitted on the Record;  
Issued August 13, 2001*

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DECISION and ORDER

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

The issue is whether appellant sustained a head injury while in the performance of duty.

On March 15, 2000 appellant, then a 38-year-old flat sorter operator, filed a traumatic injury claim, alleging that she sustained a head injury, back pain and strained muscles when she was leaving her supervisor's office after an altercation and the supervisor slammed the door behind her.

In support of her claim, appellant submitted a duty status report, a disability certificate dated March 20, 2000 from Dr. Percy May,<sup>1</sup> take-home instructions from an emergency department and three witness statements. Dr. May checked a box indicating that appellant was "totally incapacitated" from March 15 through 22, 2000 and could perform light duty with no lifting more than 20 pounds for 1 week.

In a witness statement dated March 21, 2000, appellant's coworker, Lori Sall, stated that she "heard a door slam loudly." She indicated that she heard appellant say "now you're trying to hit me with a door." Carl Jones indicated that appellant told him that when she left the office, the supervisor (almost) hit her with the door "when she slammed it shut." The Office of Workers' Compensation Programs received a statement from appellant's supervisor alleging that appellant was nowhere in sight when she closed the door as well as a letter from the employing establishment challenging appellant's claim.

By letter dated April 4, 2000, the Office informed appellant that additional factual and medical information was necessary to support her claim.

Appellant submitted witness statements and a personal letter dated April 4, 2000. Mary Hileman stated that she "heard the door slam and looked over and saw [appellant] standing

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<sup>1</sup> The Board was unable to determine whether this physician is Board-certified.

in front of the door.” Sheila Pruitt indicated that “the door from leave control slammed shut as [appellant] came out in the hallway. It appear[ed] like the door hit the back of her head.”

Appellant submitted two additional witness statements from Douglas Jones and Darlene Gillies dated March 15, 2000. Mr. Jones indicated that he “heard the A.C.O. (attendance control office) door slam.” Ms. Gillies indicated that she heard appellant say: “no one is going to hit me and get away with it” and that she was going to call the police.

Appellant submitted a personal statement dated March 15, 2000, second treatment note from Dr. May dated March 24 and an April 25, 2000 report from Dr. May. He again checked a box indicating that appellant was “totally incapacitated” from March 15 through 27, 2000. In his April 25, 2000 report, Dr. May indicated that appellant gave a history of being hit on the head when a door slammed. He had treated appellant three times and on examination found that appellant had “swelling of the paraspinal muscle of cervical spine.” Dr. May stated that the diagnosis was “contused head and cervical myositis.” He concluded by stating that “the history and physical findings confirm that the work incident caused the injury.”

By decision dated June 6, 2000, the Office denied appellant’s claim, finding that the evidence of record did not establish fact of injury.

By letter dated June 16, 2000, appellant requested reconsideration.

The Board finds that appellant has not met her burden of proof to establish that she sustained a head injury while in the performance of duty.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</sup> has the burden of establishing the essential elements of 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 timely filed within the applicable time limitation period 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.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To determine whether an employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

An employee has not met her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>7</sup> Such circumstances 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>8</sup>

In this case, appellant submitted several witness statements, but none of the witnesses actually saw the door hit appellant's head. Several stated that they "heard the door slam," which would indicate that the door closed completely without any obstruction. In addition, the witnesses stated that they heard appellant say that the supervisor "almost" hit her with the door or that the supervisor was "trying" to hit her with the door, indicating that the door did not actually hit her body. One witness indicated that it "appeared" as if the door hit the back of appellant's head, but she did not actually see the alleged contact. These circumstances cast doubt on appellant's statements in determining whether a *prima facie* case has been established.

Appellant also submitted various medical reports. Emergency room discharge instructions March 15, 2000 noted no diagnosis or a history of injury. Appellant also submitted disability certificates from Dr. May. He too offered no diagnosis or history of injury. Nor did he state any opinion on the cause of appellant's incapacitation.

In his April 25, 2000 report, Dr. May noted that appellant gave a history of being hit in the head by a door and concluded that the history and his physical findings confirmed that the work incident caused the injury.

The Board has held that a conclusory statement without supporting rationale is of little probative value<sup>9</sup> and that a physician's opinion is not dispositive simply because it is offered by a physician.<sup>10</sup> In this case, Dr. May failed to explain how appellant's head contusion and cervical myositis resulted from the alleged incident. He also failed to specify how his physical findings "confirmed" that the injury occurred at work. The Board finds that his report has little probative value in establishing that the door-slammings incident resulted in appellant's diagnosed conditions.

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<sup>6</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

<sup>7</sup> *Tia L. Love*, 40 ECAB 586, 590 (1989).

<sup>8</sup> *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987).

<sup>9</sup> *Marilyn D. Polk*, 44 ECAB 673 (1993).

<sup>10</sup> *Michael Stockert*, 39 ECAB 1186 (1988).

The June 6, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
August 13, 2001

Michael J. Walsh  
Chairman

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member