

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NANCY C. SCHMITT and U.S. POSTAL SERVICE,
POST OFFICE, Anchorage, AK

*Docket No. 00-760; Submitted on the Record;
Issued February 7, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained a right-sided thoracic soft tissue injury on July 8, 1999 in the performance of duty.

On July 21, 1999 appellant, then a 57-year-old communications specialist, filed a claim alleging that on July 8, 1999 she experienced a sharp pain in her right back when she attempted to move a box full of computer books and that she reinjured it on July 12, 1999 when she pushed a box with her foot.

Appellant was first examined by an employing establishment referral physician, Dr. Richard W. Stratton, a Board-certified internist, on July 27, 1999, who noted the date of injury as July 15, 1999 and the mechanism of injury as "pushed box with right foot," which produced pain in her right lower back. Dr. Stratton diagnosed strain and referred appellant for physical therapy.

The employing establishment controverted appellant's claim, noting that appellant did not stop work on July 8, 1999 but completed her workday and then came to work the next day and worked at her regular job. The employing establishment advised that appellant had been instructed not to pick up anything heavy because of a preexisting back condition. The employing establishment noted that appellant did not seek medical attention until July 27, 1999, that at that time no period of disability was indicated and appellant worked her regular duty from July 16 until August 2, 1999.

Appellant was treated by her attending Board-certified physiatrist, Dr. Susan S. Klimow, on August 2, 1999, who noted a history of injury that, on July 5, 1999, appellant tried to push a box away from a file cabinet with her right leg and foot and was stooping over to move it when she experienced the immediate onset of discomfort in the right side radiating to the right rib cage. She reagravated it the next day bending over to move the box. Dr. Klimow noted that appellant's numerous chronic pain medications were due to her underlying low back discomfort

with herniated nucleus pulposus. She also treated appellant on August 9 and 16, 1999 and indicated that appellant was advised to resume work on August 17, 1999.

An August 5, 1999 physical therapy report noted as a history of injury that “on July 5, [1999] while trying to move a box with her foot, [appellant] felt pain into the mid thoracic spine on the right. On July 9, [1999] again while bending forward to pick up a box [appellant] felt pain in the same area.”

In response to the Office of Workers’ Compensation Programs’ August 24, 1999 request for further information, appellant replied that on July 8, 1999 when she attempted to move a box with her foot she felt a sharp pain in her right middle/upper back. When she again tried to move the box her pain increased. Four days later she tried to lift the box and the pain intensified. Appellant claimed that the immediate affect of the powerful pain caused her to sit down and cry, but that the reason she did not seek immediate medical attention was that she was waiting for the paperwork from Denver so that she could go to the doctor. Appellant claimed that she was doing what she thought she was supposed to do. Appellant stated that the contract doctor, Dr. Stratton, did nothing, so she then went to her own physiatrist for muscle relaxants.

By decision dated September 23, 1999, the Office rejected appellant’s claim finding that she had failed to establish fact of injury. The Office found that the statements of record contained too many inconsistencies to be of great probative value.

The Board finds that appellant has failed to establish that she sustained a right sided thoracic soft tissue injury on July 8, 1999 in the performance of duty.

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 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.² These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. 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 that is alleged to have occurred.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989); *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁴ For a detailed discussion of the components of an appellant’s burden of proof in establishing fact of injury see *Elaine Pendleton*, *supra* note 2.

The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ This component can be established by an employee's uncontroverted statement on the Form CA-1.⁶ A consistent history of the injury as reported on medical records, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.

Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury as defined in the Act and its regulations.⁷ To establish a causal relationship between the condition and any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship.

In this case, appellant did not file an injury claim on the date of alleged incident but waited almost two weeks before reporting it and provided no evidence that she had timely notified her supervisor regarding the injury occurrence. The lack of prompt notification and reporting of this injury and lack of confirmation of occurrence diminish the probity of her traumatic injury claim.

Appellant initially alleged that on July 8, 1999 she injured her right back when she attempted to move a box of books. On July 12, 1999 she pushed the box with her foot. However, in her later statement to the Office, appellant claimed that she attempted to move the box with her foot on July 8, 1999, which caused the middle/upper back pain and aggravated in on July 12, 1999 when she attempted to lift the box. This factual inconsistency from appellant regarding the order of the specific injurious activities further diminishes the probity of appellant's claim.

Further, the history as reported by Dr. Stratton was that appellant had a July 15, 1999 injury from pushing a box with her foot. The history as reported by Dr. Klimow was that of a July 5, 1999 box pushing incident followed by stooping over to move it. The physical therapist

⁵ *John J. Carlone*, 41 ECAB 354 (1989). To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

⁶ *John J. Carlone*, *supra* note 5.

⁷ *See Loretta Phillips*, 33 ECAB 1168, 1170 (1982); *Virgil M. Hilton*, 32 ECAB 447, 452 (1980); *Max Haber*, 19 ECAB 243, 247 (1967). Section 8101(1)(5) of 5 U.S.C. defines "injury" in relevant part as follows: "injury" includes, in addition to injury by accident, a disease proximately caused by employment...." Section 10.5(ee) of 20 C.F.R. defines "traumatic injury" as follows: "[A] condition of the body caused by a specific event or incident, or series of events or incidents within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected."

reported a history that appellant attempted to move the box with her foot on July 5, 1999 and on July 9, 1999 reinjured the area while bending forward to pick up the box. These inconsistent dates of injury cast doubt on appellant's claim.

Moreover, appellant continued to work on July 8, 1999 and worked the next day for the entire shift without reported problems. This continuing to work without documented problems casts further doubt on her claim.

Although, appellant claimed that on July 8, 1999 the pain was so intense that it caused her to sit down and cry, she did not seek medical treatment for more than two and one half weeks. This inconsistency of action also diminishes the probity of appellant's claim.

Appellant did not provide a consistent history regarding either the date or circumstances surrounding the incidents she alleged injured her back. Appellant has failed to provide sufficient corroborating evidence to substantiate that such an injury occurred as alleged. She has failed to establish the first component of "fact of injury." As appellant failed to provide a consistent history of injury such that the occurrence of an injurious event or incident could not be established, the Board has no need to consider the causal relationship aspect of the medical evidence.

Accordingly, the decision of the Office of Workers' Compensation Programs dated September 23, 1999 is hereby affirmed.

Dated, Washington, DC
February 7, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member