

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SABRINA ENGLISH and U.S. POSTAL SERVICE,
POST OFFICE, Houston, TX

*Docket No. 01-418; Submitted on the Record;
Issued October 24, 2001*

DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on April 27, 1999.

On April 29, 1999 appellant, then a 36-year-old mailhandler, filed a claim for an injury sustained on April 27, 1999 when her chair was hit from behind and she was "knocked with force against [her] left shoulder and [her] body was twisted." Appellant stated that she felt her chair move as if someone had tripped over it, and that the next thing she felt was someone on her left shoulder with enough force to twist her left shoulder toward her right knee.

By decision dated August 20, 1999, the Office of Workers' Compensation Programs found that fact of injury was not established, as there were inconsistencies as to whether the April 27, 1999 incident occurred as alleged.

By letter dated September 16, 1999, appellant requested a hearing, which was held on January 26, 2000.

By decision dated March 14, 2000, an Office hearing representative found that appellant had not established that the April 27, 1999 incident occurred as alleged, because as "the factual evidence is inconsistent regarding the incident and the circumstances surrounding the claim are questionable."

The Board finds that appellant has not established that she sustained an injury in the performance of duty on April 27, 1999 as alleged.

An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged, by the preponderance of the reliable, probative, and substantial evidence. 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. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹ 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.²

The principal inconsistency in this case is that coworker Carolyn Arvie who, according to appellant, pushed or fell against her left shoulder on April 27, 1999, submitted an April 29, 1999 statement: "I did not fall on her shoulder. An[d] no way I am going to be a part of workman[']s comp[ensation] fraud." The other coworker in the room at the time, Maxine Bocard, stated that she did not see Ms. Arvie fall on appellant.

Ms. Arvie also stated that appellant did not say anything on April 27, 1999 about injuring her shoulder at any time before they went home at 11:30 p.m., and that she first became aware of the alleged injury on April 29, 1999. This is contrary to appellant's statements that she shouted or hollered "Oh! No! Not my bad shoulder" or "Oh, Lord, not on my bad shoulder."³ Appellant first presented these allegations that she shouted or hollered in a May 6, 1999 statement. The investigative report two days after the alleged April 27, 1999 incident, in which both the other people in the room at the time were interviewed, does not mention any utterance by appellant. Ms. Arvie stated that appellant "would have hollered at her or said something" if she had fallen on her. The investigative report concluded that the alleged April 27, 1999 accident did not take place.

There was a third person in the room where the April 27, 1999 injury allegedly occurred. This coworker, Ms. Bocard, submitted an April 29, 1999 statement that she did not see Ms. Arvie fall on appellant and a January 25, 2000 statement: "[Appellant] told me that lady hit her arm. Date April 27, 1999." Appellant alleged at the January 26, 2000 hearing that she assumed that Ms. Bocard heard her holler, but did not submit any evidence to corroborate this assumption. Ms. Bocard's statements do not indicate that she heard appellant cry out.

¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

² *Dorothy Kelsey*, 32 ECAB 998 (1981).

³ Appellant had undergone left shoulder surgery in September 1998.

The decision of the Office of Workers' Compensation Programs dated March 14, 2000 is affirmed.

Dated, Washington, DC
October 24, 2001

David S. Gerson
Member

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member