

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOYCE CLEMENT and U.S. POSTAL SERVICE,  
PROCESSING & DISTRIBUTION CENTER, Portsmouth, NH

*Docket No. 01-147; Submitted on the Record;  
Issued September 7, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on March 3, 2000 as alleged.

On March 10, 2000 appellant, then a 68-year-old mail processor, filed a claim for a traumatic injury, stating that on March 3, 2000 between 3:00 a.m. and 4:00 a.m. she sustained a lumbar back sprain from bending and lifting trays of mail to process through a high-speed machine. Appellant stopped work at the end of her shift on March 3, 2000<sup>1</sup> and did not return to work. She resigned from her position on or about March 10, 2000.

In a statement dated March 4, 2000, appellant's trainer stated that on March 3, 2000 appellant mentioned to him that she had hurt her back, that he asked her if she did it at work and that she said "no, she hurt it while she was moving." In an undated statement received by the Office of Workers' Compensation Programs on March 24, 2000 a coworker stated that on appellant's second night at work, while she was being trained, he asked her how she was doing because he had been told she had hurt her back moving. This coworker stated that appellant acknowledged to him that she had hurt her back moving. In a statement dated March 10, 2000, a second coworker stated that on March 3, 2000 he took a telephone call from appellant, who "stated that she had hurt her back while moving and would not be in for work that night." In a statement dated March 5, 2000, a third coworker stated that on March 4, 2000 he took a telephone call from appellant stating that she was unable to come in to work because her back was still sore from moving.

In a statement dated March 14, 2000, appellant's supervisor stated that appellant underwent classroom training on February 27, 2000, that the following morning she requested leave for the next two days because she was moving and that on March 2, 2000, the night she returned to work, he observed her working extremely slowly. The supervisor stated that on March 5, 2000 appellant called and told him that she had been to the hospital because she hurt

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<sup>1</sup> Appellant's regular work hours were from 11:00 p.m. to 7:50 a.m.

her back moving and that on the morning of March 6, 2000 she again told him that she hurt her back moving but felt that she may have aggravated it at work by being on the machine. Appellant's trainer provided a chronology of her training for one night, indicating that she performed feeding from 1:45 a.m. to 2:10 a.m., took lunch from 2:10 a.m. to 2:45 a.m., helped sweep the machine from 2:45 a.m. to 3:00 a.m. and fed the first pass from 3:00 a.m. to 4:15 a.m.

In a statement dated April 20, 2000, appellant stated that she first reported to her new job at the employing establishment on February 27, 2000, that on February 29 and March 1, 2000 a moving company moved her into her new apartment, that on March 2, 2000 she reported to work for on-the-job training on the delivery point bar code sorting machine, that somewhere after her lunch break she began to feel severe back pain and made the comment, "I must have wrenched my back moving, I don't know." Appellant continued that on March 3, 2000 she awoke and was barely able to get out of bed, that she called work that night to advise that she was unable to work due to back pain and that on March 5, 2000 she went to a hospital emergency room and that she told the acting supervisor that she felt her back condition was from moving, even though she never lifted a box. Appellant stated that she returned to the emergency room on March 8, 2000 that the physician said she needed physical therapy and that she had an acute lumbar sprain typical of bending and lifting and that it was then that she realized her back condition must have occurred on the job.

Appellant submitted a hospital emergency room note indicating she was examined by Dr. Donavon R. Albertson, on March 5, 2000 and should remain off work two days. An emergency room note dated March 8, 2000, diagnosed an acute myofascial strain and prescribed work tolerance limitations. A physical therapist's March 9, 2000 note stated that appellant noted increased low back pain at work on March 3, 2000 and that her position involved increased bending and lifting to put mail on a conveyor belt. A nurse practitioner, in a March 13, 2000 report indicated that appellant complained that she hurt her back lifting and moving boxes.

By decision dated May 18, 2000, the Office found that appellant had not met the requirements for establishing that her condition was caused by a work event, as the factual evidence failed to resolve exactly how the alleged injury occurred and the medical evidence failed to establish how her condition was related to the injury she alleged.

By letter dated June 30, 2000, appellant requested reconsideration, contending that her statements to her trainer and acting supervisor that she wrenched her back moving were erroneous, as she did not lift or move anything. In a statement attached to her request appellant stated that she felt fine when she reported for work on March 2, 2000 she described her work activities on that date, stating that she repeatedly bent to ground level, picked up trays, stood up and twisted to place the mail on the feeder. Appellant submitted a March 5, 2000 report from Dr. Albertson stating that appellant presented because of lumbar pain and that she had been quite active on the third shift lifting and turning boxes that were not very heavy most of the night.

By decision dated September 28, 2000, the Office found that the additional evidence was not sufficient to warrant modification of its prior decision.

The Board finds that appellant has not established that she sustained an injury in the performance of duty on March 3, 2000 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.<sup>2</sup> 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.<sup>3</sup>

Appellant did not report her alleged March 3, 2000 employment injury until seven days after it allegedly occurred. On the night of March 3, 2000 she told her trainer that she did not hurt her back at work but rather while moving, a statement she repeated to a coworker. When she called in sick that night, she reported that she hurt her back while moving, a statement she repeated when she called in sick the following night. These repeated statements are inconsistent with her assertion, first made after the rejection of her claim, that she felt fine when she reported to work on the night in question. Her failure to mention an injury at work on the night it allegedly occurred or when she called in sick the following two nights is inconsistent with the occurrence of a traumatic injury at work, as is her inability to identify a specific work incident. Appellant's course of action casts serious doubt upon the occurrence of an employment injury on March 3, 2000 as alleged.

The September 28 and May 18, 2000 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
September 7, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member

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<sup>2</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>3</sup> *Dorothy Kelsey*, 32 ECAB 998 (1981).