

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DARLENE THOMPSON and U.S. POSTAL SERVICE,
GRAND SHELBY STATION, Detroit, MI

*Docket No. 02-880; Submitted on the Record;
Issued November 25, 2002*

DECISION and ORDER

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

The issue is whether appellant has established that she sustained an injury causally related to her federal employment.

On May 16, 2001, appellant, then a 42-year-old letter carrier, filed a traumatic injury claim alleging that on May 7, 2001, while lifting boxes, tubs and trays of mail out of a truck and building, she suffered back pain. She submitted a statement in which she indicated that she sustained injury when she loaded two routes and reported to her supervisor that she was in pain.

Appellant submitted handwritten notes from Dr. Aaron W. Maddox, an internist. In an undated note, he indicated that appellant was totally disabled and would need to see a physiatrist as a result of an on-the-job injury. On May 7, 2001 Dr. Maddox indicated that appellant was under his care for a lumbar strain and could return to work on May 16, 2001. He also indicated that appellant could do no stairs, no excessive walking or bending and no pushing or lifting over 30 pounds until her next appointment with him.

The employing establishment controverted the claim and submitted appellant's requests for absences dated May 7 through May 15 and May 16 through May 17, 2001. In these requests, appellant checked the box indicating that she was sick. The employing establishment also submitted a letter of warning issued to appellant on June 6, 2001.

By letter dated July 5, 2001, the Office of Workers' Compensation Programs requested that appellant submit further medical information with regard to her claim. No additional evidence was timely submitted.

By decision dated August 8, 2001, the Office denied appellant's claim on the grounds that there was insufficient medical evidence.

On August 20, 2001, appellant requested reconsideration and submitted a medical report dated August 12, 2001 from Dr. Maddox, who stated that appellant had visited his office on

May 7, 2001 complaining of severe back pain which she indicated occurred when she pushed a mail cart up a ramp. He noted that appellant had a previous history of a back injury which had healed and was giving her no problems. Dr. Maddox opined that appellant suffered from a job-related lumbar strain. Appellant also submitted physical therapy progress reports.

In a November 20, 2001 decision, the Office denied modification of the August 8, 2001 decision. In the memorandum accompanying the decision, it was noted that there was conflicting information with regard to how the injury occurred, in that appellant indicated at different times that she hurt herself by: (1) assisting a coworker setting up two mail routes; (2) pushing a cart; and (3) lifting boxes and tubs of mail out of a truck. The memorandum noted that until the issue of how the injury occurred was resolved, the issue of causal relationship was secondary.

The Board finds that this case is not in posture for decision.

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 is causally related to the employment injury.² These are the 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 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 he or she actually experienced the employment incident at the time, place and in the manner alleged.⁴ 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.⁵ An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or a specific condition for which compensation is claimed are causally related to the injury.

An injury does not have to be confirmed by eyewitnesses in order to establish that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with surrounding facts and circumstances and her subsequent course of action.⁶ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work

¹ 5 U.S.C. §§ 8101-8193.

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

³ *Delores C. Ellyett*, 41 ECAB 992, 994 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-25 (1990).

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Id.*

⁶ *See Shirley A. Temple*, 48 ECAB 404, 407 (1997).

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.⁷ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁸

In the instant case, appellant's claim was first denied for lack of medical evidence showing a causal relationship between appellant's condition and her employment. On reconsideration, appellant's claim was denied for the reason that she had not shown that she sustained the May 7, 2001 incident, as alleged.

The Board finds that appellant has submitted sufficient evidence that she was working on May 7, 2001 and experienced the incident. The Board notes that on her claim form, appellant stated that she was injured while lifting boxes, tubs and trays of mail out of a truck and building. In a statement accompanying the form, she again noted that she was loading mail boxes tubs and trays and further indicated that she was actually loading two routes. In a medical report of August 12, 2001, Dr. Maddox indicated that appellant complained of severe back pain while she was pushing a mail cart up a ramp. Contrary to the finding of the Office, the Board does not find that these statements are inconsistent. All of these descriptions indicate that appellant was injured on May 7, 2001 while she was loading the mail for delivery that day.

Because the Office made no findings as to whether the medical evidence established that appellant's incident caused an injury, the case will be remanded for the Office to make appropriate findings on this issue. After such further development as it considers necessary, the Office shall issue a *de novo* decision on appellant's entitlement to benefits.

⁷ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

⁸ *Doyle W. Ricketts*, 48 ECAB 167, 170 (1996).

The decisions of the Office of Workers' Compensation Programs dated November 20 and August 8, 2001 are set aside and the case is remanded for further action consistent with this decision.

Dated, Washington, DC
November 25, 2002

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member