

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of RICHARD R. ESTRADA and U.S. POSTAL SERVICE,  
POST OFFICE, ROUND ROCK, TX

*Docket No. 03-1780; Submitted on the Record;  
Issued December 19, 2003*

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DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,  
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an injury in the performance of duty on February 8, 2001 as alleged.

On June 28, 2001 appellant, then a 45-year-old letter carrier, filed a notice of traumatic injury and claim for continuation of pay/compensation (Form CA-1) alleging that on February 8, 2001 as a result of lifting trays and parcels, he sustained an injury to his lower back. Appellant stated: "I was walking out of the [employing establishment] when I had a pain in my lower back. I did n[o]t think much of it at the time. The pain started to get much worse after that." The employing establishment controverted the claim, with the acting manager of the employing establishment stating:

"In March 2001 [appellant] took 11 days of annual leave. He was scheduled to report back to work on March 21<sup>st</sup>. On that day [appellant] called [his supervisor] and stated that he could not report to work because he had injured his back while on annual leave. He further stated that he would be going to his doctor and would let [his supervisor] know of his prognosis. [Appellant's supervisor] noted the absence as sick leave and told [appellant] to bring the documentation necessary for FMLA-SL. [Appellant] requested and received a return to work clearance for '**off the job conditions.**' The form was filled out by his physician with limitations. [Appellant] then requested and was granted [l]ight [d]uty. [Appellant] worked on [l]ight [d]uty through June 27<sup>th</sup>. At this time he was out of sick and annual leave. (Emphasis in the original.)

"In mid June [appellant] spoke with management and stated that he wanted to file a [Form] CA-1 for his back injury. When questioned about his reversal he initially said he injured himself in April while loading his vehicle. [Appellant] was given the requested paperwork but did not return it until June 28<sup>th</sup> and now states that he injured his back on February 8 while walking from the station to his LLV. He went on to say that he did not report the pain but it became worse.

The employing establishment submitted appellant's supervisor's calendar notes for March 21, 22 and 27, 2001. These notes indicate that appellant talked to his supervisor on these dates and indicated that appellant complained of herniated discs.

By letter dated August 20, 2001, the Office of Workers' Compensation Programs asked appellant to submit a physician's opinion with a medical explanation as to how the reported work incident caused or aggravated the claimed injury. Appellant submitted medical reports from Dr. Thomas M. Daniel, an internist, who indicated that appellant was treated for complaints of back pain radiating to the right leg on March 19 through 28, 2001. Dr. Ted Spears, a Board-certified orthopedic surgeon, indicated that appellant was treated by him for chronic back pain since March 2001. In an attending physician's report dated August 22, 2001, Dr. Stephen B. Cox indicated that appellant had an L4-5 herniated disc on his right side. Dr. Cox indicated that he believed that this condition was caused or aggravated by an employment activity as "Patient states his job entails that he lift heavy trays frequently throughout the day. He states that he noticed pain after this activity." Appellant responded to questions asked by the Office, indicating that he had pain in his back as he walked out of the employing establishment and that the pain got worse each day. Appellant noted that on the date of the injury, he had been lifting and loading tubs and trays of mail into a hamper. In response to the Office's query, "Please provide an explanation as to the back injury, which occurred apparently off the job and you took annual leave," appellant responded "N/A."

By decision dated September 20, 2001, the Office denied appellant's claim as it found that the medical evidence was not sufficient to establish that appellant's condition was caused by the employment factor.

By letters dated October 4, 2001 and January 25, 2002, appellant requested reconsideration and submitted additional medical reports from Dr. Cox, who diagnosed a herniated disc L4-5/L5-S1 and indicated that appellant was restricted to limited-duty pending further evaluation. In a June 8, 2001 report, Dr. Cox noted that appellant stated that he was walking out of the door of the employing establishment when he felt a pinching in his low back.

By decision dated February 5, 2002, the Office noted that the initial decision denied appellant's claim for the reason that the medical evidence did not support a causal relationship. The September 20, 2001 decision was modified to deny appellant's claim because the factual evidence did not support that appellant actually experienced the events of February 8, 2001. The Office noted that there were too many discrepancies in the file.

By letter dated February 4, 2003, appellant again requested reconsideration and submitted additional evidence. In an affidavit dated December 2, 2002, Dr. Wendee Whitehead, a chiropractor, stated that he treated appellant from April 3 to May 2, 2002 and that appellant had related to him at the initial examination that his problem resulted from a work-related injury. Dr. J.C. Cain wrote on December 18, 2002 that he remembered visiting appellant in his home on December 4, 2001 and appellant told him that he injured his back while at work delivering mail. In a December 12, 2002 statement, appellant's sister, Carolina E. Zuniga indicated that she remembered that around February 2001, appellant informed her that he had injured himself while on the job. In a December 15, 2002 statement, Richard R. Gil indicated that appellant told him in April 2001 that he injured his back while on the job. Cliff Modlin in a statement dated

February 27, 2002, stated that he remembered appellant complaining about his back hurting “before he took off for vacation last year.” Appellant also submitted a statement from his wife. Appellant contended that he never reported his injury as an off-the-job injury and that he experienced pain prior to the February 8, 2001 incident. He noted that on February 8, 2001 as he was leaving the office to go on break, he felt his back pop and became painful which restricted his movement. Appellant stated that while he was on annual leave, the back pain got worse and that when he returned home, he was unable to walk.

By decision dated March 19, 2003, the Office reviewed appellant’s case on the merits and denied modification of the February 5, 2002 decision.

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury on February 8, 2001, as alleged.

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>1</sup> 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.<sup>2</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>3</sup>

In a traumatic injury case, the employee must establish by the weight of reliable, probative and substantial evidence the occurrence of an injury in the performance of duty at the time, place and in the manner alleged and that the injury resulted from a specific event or incident.<sup>4</sup> The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged or if the evidence establishes that the specific event or incident, to which the employee attributes the injury was not in the performance of duty.<sup>5</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 cast doubt on an employee’s statements in determining whether he or she has established his or her claim.<sup>6</sup>

On June 28, 2001 appellant alleged that he was injured on the job on February 8, 2001, when he felt his back pop and became painful and restricted his movement. He stated that he

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>4</sup> *Thelma Rogers*, 42 ECAB 866, 869 (1991).

<sup>5</sup> *Elaine Pendleton*, *supra* note 2.

<sup>6</sup> *Thelma Rogers*, *supra* note 4; *Merton J. Sills*, 39 ECAB 572, 575 (1988).

was leaving the Office after lifting trays of mail. Appellant noted that while he was on annual leave his pain kept getting worse and, by the time he got home, he was unable to walk. The Board finds that appellant's claim is put in doubt by the fact that he delayed filing his claim for over four months. The Board also notes that the first medical report to indicate that appellant injured himself on the job was dated June 8, 2001, also four months after his alleged injury. The employing establishment noted that it was not notified of an injury occurring on February 8, 2001; rather, appellant notified a supervisor following annual leave that he had injured his back while on leave. No history of an employment injury is noted in the medical evidence until Dr. Cox reported on June 8, 2001 that appellant experienced pain while walking out the door at work. He did not list any history of appellant lifting a heavy tray of mail until August 22, 2001. Dr. Cain noted obtaining a history from appellant of an injury while delivering mail. Appellant submitted numerous affidavits, all signed approximately two years after the alleged incident. Only appellant's sister and his wife remember appellant telling them about an alleged work incident at or around the time of its occurrence in February 2001. Due to the lack of evidence contemporaneous to the time of the alleged injury, this Board is not persuaded that appellant sustained the February 8, 2001 incident as alleged. The Board notes that appellant apparently continued working until leaving for vacation in March 2001. The delay in filling the claim together with the inconsistent histories provided cast doubt that appellant sustained an injury at work on February 8, 2001.

The decision of the Office of Workers' Compensation Programs dated March 19, 2003 is hereby affirmed.

Dated, Washington, DC  
December 19, 2003

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Michael E. Groom  
Alternate Member