

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MORRIS L. RUSSELL and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Savannah, GA

*Docket No. 02-1303; Submitted on the Record;
Issued February 6, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury on May 3, 2001, as alleged.

On May 31, 2001 appellant, then a 52-year-old mailhandler, filed a traumatic injury claim alleging that on May 3, 2001 he injured his lower back when he twisted and stepped away while “unsleeving” a tray of mail.

The employing establishment controverted appellant’s claim, stating that he had an attendance problem and noted that he filed the claim after his supervisor confronted him about providing medical documentation to support his absence from work. The employing establishment also noted that appellant did not seek medical treatment until several weeks after the alleged injury on May 3, 2001.

In a statement dated June 1, 2001, appellant’s supervisor stated that appellant left work early on May 4, 2001 because he did not feel well. Appellant called in sick on Saturday, May 5, 2001 (Sunday and Monday, May 6 and 7, 2001 were nonscheduled days) and called in sick again on Tuesday, May 8, 2001. He called in again on May 8, 2001 and requested emergency annual leave for May 9, 2001 indicating that he had to take care of something very important. The supervisor stated that he told appellant that he would need to provide a note from his physician on May 10, 2001 because he had been off work for almost five days. Appellant returned to work on May 10, 2001 but did not provide any medical documentation for his absence and indicated that his back was no longer hurting. Appellant advised his supervisor that he had been experiencing backaches for a long time but the pain was not constant.

Appellant submitted medical forms indicating that he was treated on May 31, 2001 by Dr. William C. Rhangos, an orthopedic surgeon, for a possible herniated disc and a lumbosacral strain.

In a narrative report dated May 31, 2001, Dr. Rhangos noted that appellant felt sudden low back pain on May 3, 2001 when he twisted lifting a bin. He noted that appellant had prior

strains that had resolved with conservative care and with very little time lost from work. He indicated that appellant did not take any time off from work after the incident at work on May 3, 2001. Dr. Rhangos diagnosed a probable herniated disc at L5-S1 and recommended that appellant not return to work until a magnetic resonance imaging (MRI) scan could be performed.

In an undated form report regarding treatment on May 31 and June 14, 2001, Dr. Rhangos noted a history and mechanism of injury of bending, twisting and turning, provided a diagnosis of back pain until MRI results could be obtained, and indicated by checking the block marked "yes" that the condition was work related. He diagnosed a "probable" herniated disc and indicated that the condition was job related.

An MRI report dated June 8, 2001 indicated a left paracentral disc herniation at L4-5 with a small disc protrusion at L5-S1.

In a note dated June 14, 2001, Dr. Rhangos noted that the MRI revealed a paracentral herniated disc at L4-5 but appellant was 75 to 80 percent better with improved range of motion and fewer spasms.

By letter dated July 26, 2001, the Office of Workers' Compensation Programs requested that appellant provide additional factual and medical evidence and address the employing establishment's comments about his attendance problem.

Dr. Rhangos examined appellant again on June 28 and July 12, 2001, noting that he continued to improve and was performing light duty at work. He was released to full duty on July 16, 2001.

In a statement dated August 6, 2001, appellant denied that he had filed an injury claim because of an attendance problem. He stated that he had not experienced problems with his back before May 3, 2001 and that he delayed in seeking treatment because he thought he had a simple back strain that would get better.

By decision dated August 29, 2001, the Office denied appellant's claim on the grounds that the evidence of record did not establish that he sustained a back injury on May 3, 2001, as alleged. The Office advised that appellant's attending physician failed to provide a diagnosed condition regarding the claimed injury on May 3, 2001 as he only indicated that appellant had back pain.

By letter dated September 14, 2001, appellant requested a review of the written record.

By decision dated and finalized January 29, 2002, an Office hearing representative affirmed the Office's August 29, 2001 decision. She stated that the evidence of record was not sufficient to establish that appellant sustained an injury on May 3, 2001 at the time, place and in the manner alleged.

The Board finds that appellant failed to establish that he sustained an injury on May 3, 2001, as alleged.

An employee who claims benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.² An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an 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 or her subsequent course of action.³ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁴ 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁵ 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.⁶

In this case, appellant alleged that he sustained a back injury on May 3, 2001 when he twisted and stepped away while "unsleeving" a tray of mail. However, he did not seek medical treatment or file a claim until several weeks later on May 31, 2001. The employing establishment advised that appellant left work early on May 4, 2001 and was on sick leave May 5 and 8, 2001 and emergency annual leave May 9, 2001. However, Dr. Rhangos indicated, in a May 31, 2001 report, that appellant had not missed any work due to his back condition prior to the medical evaluation on May 31, 2001. Thus, the history given by appellant to Dr. Rhangos is not consistent with the factual evidence. Appellant's supervisor indicated that appellant had reported experiencing backaches for a long time and Dr. Rhangos also noted in his May 31, 2001 report that appellant had experienced back strains in the past. However, appellant indicated, in his August 6, 2001 statement, that he had not experienced any similar back problems prior to the alleged May 3, 2001 injury. Appellant's statement is inconsistent with the history he gave to Dr. Rhangos and his earlier statement to his supervisor. These inconsistencies cast serious doubt as to whether the claimed work incident on May 3, 2001 occurred at the time, place and in the manner alleged. Therefore, Dr. Rhangos' reports are of diminished probative value and appellant has not met his burden of proof to establish that he sustained a work-related injury on May 3, 2001.

¹ 5 U.S.C. §§ 8101-8193.

² See *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

³ See *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁴ See *Karen E. Humphrey*, 44 ECAB 908, 911 (1993); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁵ See *Linda S. Christian*, 46 ECAB 598, 600-01 (1995); *Thelma Rogers*, 42 ECAB 866, 869 (1991).

⁶ See *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

The January 29, 2002 and August 29, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
February 6, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member