

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of ROBERT A. PEARSON and U.S. POSTAL SERVICE,  
POST OFFICE, Oakland, CA

*Docket No. 02-413; Submitted on the Record;  
Issued June 11, 2003*

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DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issue is whether appellant sustained an injury in the performance of his federal employment.

On July 30, 2001 appellant, then a 35-year-old letter carrier, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on October 8, 2000 he injured his back while lifting mail from a U-cart.

Appellant submitted an August 8, 2000 report from Dr. Jack Henry, a chiropractor, diagnosing appellant with spinal biomechanical alterations, facet tropism, L5/S1 and mild spondylosis, L4 and L5 disc levels with severe disc narrowing, L5 level.

In a progress note dated October 19, 2000, Dr. Bruce N. Peterson, an internist, wrote:

“S- continues with his intermittent low back pain but with consistent reproducible left leg numbness and loss of deep tendon reflex in the left Achilles tendon. He has good extensor hallucis longus strength bilaterally. The patellar tendon on the left is actually mildly hyper reflexive. The loss in the Achilles tendon is consistent from visit to visit.

“A-low back pain with persistent left leg radiculopathy. Rule out herniated nucleus pulposus.”

In a December 21, 2000 report, Dr. Peterson interpreted a magnetic resonance imaging (MRI) scan and diagnosed a “herniated nucleus pulposus at the L5-S1 level in midline and extending both to the left and right of midline....”

In an April 10, 2001 report, Dr. Gregory A. Helm, a neurologist, indicated that appellant had a long history of low back pain and confirmed the disc herniation.

In an April 16, 2001 report, Dr. Helm wrote that he had just reviewed the most recent MRI and diagnosed a central disc herniation at the L4-5 and a larger herniation at the L5-S1 level.

On May 16, 2001 appellant underwent surgery for a decompression at L4-5 and L5-S1.

In a June 11, 2001 report, Dr. Helm indicated that appellant should be released from work until May 25, 2001 due to the surgery resulting from a work-related injury.

In an August 17, 2001 letter, the Office of Workers' Compensation Programs requested more information from appellant including a detailed description of the incident and detailed medical reports.

In a September 7, 2001 letter, appellant responded that the injury occurred as he was lifting and transferring bundles of magazines from U-carts into cages; he bent and twisted and experienced more back pain than usual. He indicated that he continued to work and continued taking prescribed medication. He informed his doctor of the incident on October 19, 2000.

In a September 18, 2001 decision, the Office denied appellant's claim finding that the evidence of record was insufficient to establish "fact of injury."

The Board finds that appellant has submitted insufficient evidence to establish fact of injury.

An employee who claims benefits under the Federal Employees' Compensation Act<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> An employee has not met his or her burden of proof of 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.<sup>4</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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>5</sup> However, an

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

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

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

<sup>4</sup> *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>5</sup> *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

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.<sup>6</sup>

The evidence surrounding appellant's claim casts doubt on whether the incident occurred as appellant has described. Appellant waited 10 months before filing notice with the Office. There is no indication in the record that he notified his supervisor at the time of the incident. Appellant indicated that he reported the incident to his treating physician on October 19, 2000, but Dr. Peterson's report of that same date does not mention an incident in October. Dr. Peterson's report, as well as appellant's own statements, indicate that appellant had a back pain preexisting the alleged incident on October 8, 2000.

The September 18, 2001 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC  
June 11, 2003

Alec J. Koromilas  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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