

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PERCILLIA O. WALKER and U.S. POSTAL SERVICE,
CARRIER ANNEX, Mahwah, NJ

*Docket No. 03-1840; Submitted on the Record;
Issued September 10, 2003*

DECISION and ORDER

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

The issue is whether appellant met her burden of proof to establish that she sustained an injury on March 4, 2003 in the performance of duty.

On April 9, 2003 appellant, then a 49-year-old letter carrier, filed a claim alleging that she sustained a bruise and torn ligament of her left knee at work on March 4, 2003. Appellant stated, "I was pushing the skid back inside the building [and] the skid hit me on my left knee cap." She did not stop work after March 4, 2003. The employing establishment controverted appellant's claim and the record contains an April 2, 2003 statement in which appellant's supervisor, Michael Bolton, indicated that appellant told him *via* telephone on March 16, 2003 that she had hurt her knee while walking down the stairs at home. Mr. Bolton indicated that appellant went to the hospital to "have it checked out" on March 17, 2003. Appellant submitted a March 18, 2003 note in which Dr. Patricia J. Brown, an attending Board-certified internist, stated that she had been treated for a "ligament injury" and could return to work on April 1, 2003.

By letter dated April 30, 2003, the Office of Workers' Compensation Programs requested that appellant submit additional factual and medical evidence in support of her claim within 30 days of the date of the letter. In particular, the Office requested that she provide additional information about the incident mentioned in Mr. Bolton's letter. Appellant did not submit any additional evidence in the time allotted. By decision dated June 3, 2003, the Office denied appellant's claim on the grounds that she did not establish the fact of injury on March 4, 2003.

The Board finds that did not meet her burden of proof to establish that she sustained an injury on March 4, 2003 in the performance of duty.

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

¹ 5 U.S.C. §§ 8101-8193.

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 her subsequent course of action.³ An employee has not met 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.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

The Board finds that there are such inconsistencies in the evidence as to cast serious doubt upon the validity of appellant's claim. Appellant alleged that she sustained a left knee injury at work on March 4, 2003 when her left kneecap was hit by a skid cart. However, the record contains evidence which suggests that she sustained a knee injury while walking down stairs at home either on or prior to March 16, 2003. Appellant did not provide any explanation for this apparent contradiction despite being provided the opportunity to do so. An examination of the factual elements of the medical evidence does not provide any further clarification of the matter. The record contains a March 18, 2003 note in which Dr. Brown, an attending Board-certified internist, stated that appellant had been treated for a "ligament injury" and could return to work on April 1, 2003. However, it remains unclear whether Dr. Brown treated appellant for the work-related injury that allegedly occurred on March 4, 2003.⁷ Appellant did not stop work after March 4, 2003 and she provided no explanation for her apparent ability to work without difficulty after that date. Therefore, appellant has not established the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.

For these reasons, appellant did not meet her burden of proof to establish that she sustained an injury on March 4, 2003 in the performance of duty.⁸

The June 3, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

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

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

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

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

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

⁷ Moreover, given the lack of medical evidence pertaining to the alleged March 4, 2003 injury, appellant has not explained the apparent delay in seeking treatment for the claimed injury.

⁸ Appellant submitted additional evidence on appeal to the Board, but the Board cannot consider such evidence for the first time on appeal; see 20 C.F.R. § 501.2(c).

Dated, Washington, DC
September 10, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member