

**United States Department of Labor
Employees' Compensation Appeals Board**

JEANETTE BRICE, Appellant

and

**U.S. POSTAL SERVICE,
POST OFFICE, Brooklyn, NY, Employer**

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**Docket No. 03-1778
Issued: February 5, 2004**

Appearances:
Jeanette Brice, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chairman
DAVID S. GERSON, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 7, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated April 1, 2003. Because less than one year has elapsed between the last merit decision dated April 1, 2003 and the filing of this appeal on July 7, 2003, the Board has jurisdiction to review the merits of appellant's claim.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on February 7, 2002, as alleged.

FACTUAL HISTORY

On March 22, 2002 appellant, then a 40-year-old letter carrier, filed a claim for a traumatic injury alleging that on February 7, 2002 at 1:45 p.m., while delivering mail, she tripped on an extended piece of cement and in trying to "embrace" her fall, she snapped her shoulder and elbow out of place. She stated that she sprained her shoulder and had multiple contusions in her elbow. Appellant stated that the injury occurred on route 9 on Herkimer & Troy Avenue. She

stopped working on February 8, 2002. Appellant's supervisor, James Irizarry, stated that appellant "never" informed management that she was injured on the job when she called in but just stated that she was hurt "this morning" and went to the emergency room. He stated that appellant did not report the injury until a week later and did not know where she got hurt.

In a disability note dated February 8, 2002, appellant's treating physician, Dr. Apostolos P. Tambakis, a Board-certified orthopedic surgeon, diagnosed a sprain in the upper extremity and multiple contusions and stated that appellant was unable to work for three weeks. Other disability notes dated February 25, March 8 and 18 and April 2, 2002 described appellant's condition and noted that she was unable to work.

In a routing slip dated March 28, 2002, Terry A. Pessoa stated that as closing supervisor on February 7, 2002 appellant "never" reported that she had an accident on her assigned route that day.

In a routing slip dated March 22, 2002, the shop steward, Rene Randy Brooks, said he had not seen appellant at work for a few days and as was his custom in such a situation, Mr. Brooks asked appellant's supervisor about her. He said that appellant's supervisor told him that appellant called and said that she fell at home and had hurt her shoulder and would be out for three weeks. A week later Mr. Brooks said appellant's supervisor called him to his office with appellant present and appellant told him she would get compensation and Mr. Brooks asked appellant why he and management were not notified of the fall. Mr. Brooks stated that appellant replied that she did not know that she was hurt until the next morning, but the acting supervisor was behind her and "he heard her." Mr. Brooks asked appellant why she did not call the station and inform the acting supervisor and appellant said she thought she was okay. Appellant stated that when she subsequently spoke to the supervisor on the telephone, she told him that she fell on route. Appellant told Mr. Brooks that she did not want to fill out the Form CA-1.

In a statement dated March 22, 2002, appellant stated that she did not "realize" her injury until after seeing her physician. Appellant stated that on February 7, 2002, after she fell, she got up and continued to work believing that she would return to work the next day but instead on February 8, 2002 appellant called Mr. Irizarry stating that she fell, was in severe pain and had to go to the emergency room.

In a routing slip dated March 22, 2002, Mr. Irizarry stated that appellant stated that on February 7, 2002 at approximately 1:45 p.m. she fell on route but did not report it to a supervisor because she thought she would be okay. He stated that on February 8, 2002 appellant called in and told him that she fell, that she could not move her arm and was going to the emergency room. He asked her if she had just fallen and she replied yes. Mr. Irizarry stated that the following afternoon appellant came in and filled a "3971" for sick leave. He stated that the next week on February 15, 2002 appellant came in for her pay check and asked for her compensation number. When he asked why, she said she got hurt on the route and he called Mr. Brooks into the office. Appellant explained what happened but gave no address and could not remember where the accident happened. When Mr. Irizarry asked appellant why she did not report the accident to a supervisor, she stated that she thought she would be "alright." He told her to come back on February 20, 2002 to answer the telephones and appellant agreed but she did not return

to work until March 20, 2002. Mr. Irizarry stated that on March 22, 2002 appellant returned with an incomplete Form CA-1 because she did not know the address where her accident happened but said somewhere on Herkimer Street.

By letter dated April 29, 2002, the Office requested that appellant complete an enclosed questionnaire to further establish her claim. In her statement dated May 21, 2002, appellant stated that she did not realize how severe the injury was until the following morning before she went to work. Appellant stated that she reported the injury the day she fell to Mr. Pessoa and told him that she would see him the next day but the next day she called him and said she would be going to the emergency room. Appellant stated that she called the supervisor, "Jamie," and told him that she fell on "February 8, 2002, on account of the fall of February 7, 2002." Appellant stated that she did not fall anywhere other than on the job. Appellant also stated that although she asked for a Form CA-1 the week of February 8, 2002, she was intimidated into not initially filing a claim.

By decision dated June 4, 2002, the Office denied the claim, stating that appellant did not meet the requirements for establishing that she sustained an injury as alleged.

Appellant requested an oral hearing before an Office hearing representative, which was held on January 8, 2003. At the hearing, appellant's representative, Angelo Mangano, stated that because appellant completed her route and worked overtime on February 7, 2002 did not mean that, just as in a whiplash case in a car accident, she did not injure herself that day. He stated that appellant took 120 hours of sick leave because employees in general refrain from using post office forms for fear of repercussions and discipline, which followed in this case. Mr. Mangano stated that "Dr. [Jean Claude] Compas" medical notes were inadequate in that they did not address causation but he was not appellant's treating physician at the time of the injury.

Appellant explained how the accident happened, stating that she tripped over a piece of extended cement and when she put her arm up against a nearby wall to brace herself, she continued to fall and landed on her knees with her hands bracing herself on the ground. Appellant reiterated that it happened about 1:45 p.m. in the afternoon. She completed her route, which involved overtime work at 5:30 to 5:45 p.m. She stated that she told Mr. Pessoa verbally that day that she fell but that she felt okay and would see him tomorrow. Appellant stated that she woke up the next day and was screaming. She stated that she was unable to lift her right arm, which was in severe pain and her knees and ankle were swollen. Appellant stated that she called Mr. Irizarry and told him she fell the day before, while delivering mail on her route and told him that she would go to the emergency room. She denied that she told Mr. Irizarry that she had just fallen. She stated that, after going to the emergency room, she saw Dr. Tambakis.

Mr. Mangano stated that Mr. Pessoa was an acting supervisor and that acting supervisors become supervisors attempt to avoid having employee file claims. He stated that Mr. Pessoa was actually a carrier, who did not know all the rules. Appellant described her medical treatment and stated that an attorney from a third party, who had become involved referred her to "Dr. Compas." Appellant stated that she last saw Dr. Tambakis in May 2002 and he advised light duty and therapy and that she eventually went back to full-time work in July 2002. Appellant also testified that when she told Mr. Pessoa on February 7, 2002 that she had fallen

and hurt herself, a letter carrier, Jose, heard her but when she asked him for a statement he refused to give one.

An emergency room report dated February 8, 2002 stated that appellant fell and struck her arm which was painful. It also noted that appellant had tenderness in her right arm and wrist and a problem with her knee. Most of this emergency report is illegible.

Appellant submitted a report from Dr. Tambakis dated May 24, 2002. In his report, he stated that he saw appellant on February 8, 2002 and she told him that on February 7, 2002 while she was delivering mail, she tripped over cement, fell and sustained an injury to the right upper extremity, specifically to her elbow, shoulder and neck. He stated that she did not go to the emergency room but went to her own physician, who referred her to him for an orthopedic evaluation. Dr. Tambakis diagnosed traumatic bursitis of the right shoulder, multiple contusions of the elbow and wrist, sprains of the cervical and lumbosacral spine and contusion of the knee of the left side.

In a physical therapy report dated April 29, 2002, the physical therapist stated that he first saw appellant on April 29, 2002 and she reported sustaining injuries to her right shoulder on February 8, 2002.

In a decision dated August 26, 2002, Michael Porcaro and another union representative found that management did not meet its burden to justify a notice of removal it issued appellant on August 2, 2002 for lying to management and attempting to falsely receive remuneration by claiming an on-the-job injury. The union stated that the removal should be rescinded.

By decision dated April 1, 2003, the Office hearing representative affirmed the Office's June 4, 2002 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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.¹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.²

To establish that an injury was sustained in the performance of duty, an appellant must submit the following: (1) medical evidence establishing the presence or existence of the condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the condition; and (3) medical evidence

¹ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

² *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by claimant. The medical evidence required to establish causal relationship, generally is rationalized medical evidence. Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the appellant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.³

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. There are two components involved in establishing the fact of injury. 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

ANALYSIS

The Board finds that the evidence is conflicting regarding whether the claimed event occurred at the time, place and in the manner alleged. Appellant consistently stated in her claim, supplemental statements and at the hearing that she injured her arm and knees when she tripped on cement while delivering the mail on February 7, 2002 approximately at 1:45 p.m. She consistently stated that she did not believe she injured herself at the time and completed her tour of duty, which involved overtime. Appellant stated that it was not until the next day when she woke up in the morning that she realized her right arm and knees were severely injured and went to the emergency room. Appellant stated that she told the acting supervisor, Mr. Pessoa, before she left on February 7, 2002 that she had injured herself but she believed she was okay. Appellant also stated that the next day she told her supervisor, Mr. Irizarry, over the telephone that she hurt herself the day before at work. Appellant stated that she delayed filing a claim due to intimidation.

The contemporaneous medical notes from appellant's treating physician, Dr. Tambakis, dated from February 8 through April 2, 2002, stated that appellant was disabled due to contusions and a sprain in her shoulder but did not address the alleged injury and how it happened. The emergency room report dated February 8, 2002 is not clear when and where the alleged incident happened. In his report dated May 24, 2002, Dr. Tambakis stated that appellant

³ See *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁴ *Deborah L. Beatty*, 54 ECAB _____ (Docket No. 02-2294, issued January 15, 2003); *Tracey P. Spillane*, 54 ECAB _____ (Docket No. 02-2190, issued June 12, 2003).

⁵ *Id.*

told him on February 8, 2002 that she tripped while delivering mail on February 7, 2002 and hurt her elbow, shoulder and neck. The physical therapy report dated April 29, 2002 stated that appellant reported sustaining injuries to her right shoulder on February 8, 2002.

In the supervisor's portion of appellant's claim and in his statement dated March 22, 2002, Mr. Irizarry denied that appellant told him that she had injured herself at work. He stated that when he asked appellant during their telephone call on February 8, 2002 if she had just fallen, she said yes. Mr. Irizarry stated that appellant reported the incident a week later and did not know where she got hurt. The shop steward, Mr. Brooks, stated that when he did not see appellant for a few days after February 7, 2002 and he asked appellant's supervisor about her, appellant's supervisor stated that she had called and stated that she had fallen at home and would be out for three weeks. Mr. Brooks stated that when he was called into the office with appellant and her supervisor a week after the alleged incident occurred, appellant said the acting supervisor was behind her and "heard her" on the day of the alleged accident. He said appellant stated that she did not call the station and inform the acting supervisor because she thought she was okay. In the union's August 26, 2002 decision, stating appellant's notice of removal should be rescinded, the union found that appellant did not lie to management or attempt to falsely receive remuneration by claiming an on-the-job injury. While that decision establishes that appellant did not lie or falsify evidence, it does not show that the incident actually happened as alleged. Due to the conflicting evidence regarding the time, place and in the manner, in which the alleged incident occurred, appellant has not established her claim.⁶

CONCLUSION

Due to inconsistencies in the evidence regarding the occurrence of the alleged February 7, 2002 accident, appellant has failed to establish that she sustained an injury in the performance of duty on that date, as alleged.

⁶ See *Caroline Thomas*, 51 ECAB 451, 455 (2000).

ORDER

IT IS HEREBY ORDERED THAT the April 1, 2003 decision of the Office of Workers' Compensation is affirmed.

Issued: February 5, 2004
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member