

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

C.B., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Memphis, TN, Employer

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**Docket No. 06-1390
Issued: September 28, 2006**

Appearances:
C.B., *pro se*
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 30, 2006 appellant filed a timely appeal from the Office of Workers' Compensation Programs' April 26, 2006 merit decision denying his claim that he sustained an employment-related injury on December 19, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on December 19, 2005.

FACTUAL HISTORY

On December 20, 2005 appellant, then a 42-year-old distribution clerk, filed a traumatic injury claim alleging that he sustained a back injury on December 19, 2005 by "lifting flat trays full of mail from a float onto the binding and strapping machine at the 115 low-cost tray sorter." A supervisor indicated that appellant was injured "lifting trays for the 115 [low-cost tray sorter]"

(trays overloaded).” Appellant did not stop working for the employing establishment but took several hours off work to receive medical care.

Appellant submitted the findings of January 10, 2006 x-ray testing in which Dr. Bina Rao, an attending Board-certified radiologist, stated that he had mild degenerative changes of the lumbar spine at L2, L3, L4, L5 and S1. The clinical history portion of the report noted: “42-year-old with pain which continues believes it occurred on December 19, [2005].” Appellant also submitted documents pertaining to medication prescriptions and physical therapy.

By letter dated March 20, 2006, the Office requested that appellant submit additional factual and medical evidence in support of his claim.

By decision dated April 26, 2006, the Office denied appellant’s claim on the grounds that he did not establish the existence of an employment incident at the time, place and in the manner alleged.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² has the burden of establishing the essential elements of his 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.³ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “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 actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The term “injury” as defined by the Act, refers to some physical or

¹ The Office also indicated that appellant had not submitted sufficient medical evidence in support of his claim. Appellant submitted additional evidence after the Office’s April 26, 2006 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

⁵ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.⁷

An employee who claims benefits under the Act 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.⁸ 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.⁹ An employee has not met his 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.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

Appellant alleged that he sustained a back injury on December 19, 2005 by "lifting flat trays full of mail from a float onto the binding and strapping machine at the 115 low-cost tray sorter." By decision dated April 26, 2006, the Office denied appellant's claim on the grounds that he did not establish the existence of an employment incident at the time, place and in the manner alleged.

The Board finds that appellant established the occurrence of an employment incident on December 19, 2005 when he lifted trays full of mail onto a tray sorter. Appellant did not provide any conflicting description of the implicated employment factors. He reported the claimed December 19, 2005 injury to his supervisor and filed a traumatic injury claim just one day later. Appellant's supervisor provided a description of the December 19, 2005 employment incident which comported with that provided by appellant. There are not such inconsistencies in the evidence that would cast serious doubt upon the validity of appellant's claim, nor is there any strong or persuasive evidence to refute appellant's assertion that he lifted trays full of mail onto a tray sorter on December 19, 2005.

⁷ *Elaine Pendleton*, *supra* note 3; 20 C.F.R. § 10.5(a)(14).

⁸ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁹ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

¹⁰ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹¹ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

¹² *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

The Board further finds that, although appellant established the existence of an employment incident on December 19, 2005, he did not submit sufficient medical evidence to establish that he sustained an injury due to the accepted incident.

Appellant submitted the findings of January 10, 2006 x-ray testing in which Dr. Rao, an attending Board-certified radiologist, stated that he had mild degenerative changes of the lumbar spine at L2, L3, L4, L5 and S1. Although the clinical history portion of the report noted that appellant believed that his pain “occurred on [December 19, 2005],” Dr. Rao did not provide any opinion regarding the cause of appellant’s back injury.¹³ Appellant also submitted documents pertaining to medication prescriptions and physical therapy, but none of these documents constituted medical evidence which linked his back condition to the accepted December 19, 2005 employment incident. Therefore, appellant did not submit rationalized medical evidence showing that his claimed injury was employment related.

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on December 19, 2005.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers’ Compensation Programs’ April 26, 2006 decision is affirmed.

Issued: September 28, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees’ Compensation Appeals Board

David S. Gerson, Judge
Employees’ Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees’ Compensation Appeals Board

¹³ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).