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

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| **S.P., Appellant** | ) | |
| **and** | ) | **Docket No. 07-1584** |
| | ) | **Issued: November 15, 2007** |
| **U.S. POSTAL SERVICE, POST OFFICE, Toledo, OH, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On May 23, 2007 appellant filed a timely appeal from a May 4, 2007 merit decision of an Office of Workers' Compensation Programs' hearing representative who affirmed the denial of her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

### ***ISSUE***

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

### ***FACTUAL HISTORY***

On August 22, 2006 appellant, then a 42-year-old letter carrier, filed a traumatic injury claim alleging that she injured her back, stomach and groin area on August 16, 2006 while lifting a number of heavy parcels. She stated that she experienced back, shoulder and abdominal pain while attempting to lift boxes from a gurney and that she called a fellow employee as well as

Mark Masella, acting union president, from her route and informed them of her pain. Appellant stated that she asked for help from Valarie Zindren, her supervisor, and Jim Radford, manager, but that neither one was willing to accommodate her. She noted telephoning her post office at 2:00 p.m. but that no management officials were available. Appellant spoke to a pool clerk regarding the "morning events and my physical limitations." She stopped work on August 18, 2006 and returned on August 31, 2006. The employing establishment controverted appellant's claim.

In an August 18, 2006 note, Dr. Jay Nielsen, a Board-certified family practitioner, advised that appellant should be realistic about her capabilities and not lift objects that were too heavy. On August 21, 2006 he advised that appellant was unable to work and provided work restrictions. In an attending physician's report dated the same day, Dr. Nielsen diagnosed pelvic muscle sprain, sacroiliac strain, public strain, post-traumatic cystocele and right femoral or inguinal hernia. He noted that he treated appellant for her conditions on August 18 and 21, 2006.

In an undated statement received by the Office on August 31, 2006, Mr. Masella explained that he observed William Rawski, union steward, assisting appellant with her parcels on August 16, 2006. He approached appellant and asked if she needed help and she requested that he lift one box. In an undated statement received by the Office on September 12, 2006, Mr. Rawski stated that appellant informed him that she was unable to lift the parcels on her gurney and that he then advised management of the situation. He lifted the parcels at her request.

By decision dated October 10, 2006, the Office denied appellant's traumatic injury claim, finding that she had established that the claimed incident occurred but did not submit sufficient medical evidence to establish that the incident caused a personal injury.

In an October 5, 2006 report, Dr. Nielsen noted a new flare up of lumbar pain and a new incisional hernia. In a narrative report prepared the same day, he explained that appellant's history was significant for a work-related motor vehicle accident in 2003, in which she injured her pelvis, neck and back. Dr. Nielsen related that appellant and her supervisor disagreed about whether she should lift boxes and that appellant felt abdominal pain after lifting eight parcels.

On November 6, 2005 appellant requested an oral hearing that was held on February 22, 2007. In a November 13, 2006 report, Dr. Nielsen presented his examination notes from August 18, 2006. He explained that on August 16, 2006, while lifting parcels that "everyone agreed were heavier than most in the department," appellant experienced abdominal soreness and felt a bulge in her groin. Dr. Nielsen indicated that appellant's bladder had changed and that she may have "dropped out" a cystocele. He opined that appellant's lifting of heavy parcels caused prior surgical scar tissue to herniate, which in turn caused her cystocele.

The employing establishment submitted documents pertaining to its review of appellant's claim. On October 5, 2006, in connection with an internal investigation, the employing establishment interviewed Dr. Nielsen, who opined that appellant sustained a hernia due to the tearing of old scar tissue, which "could have happened during a lifting motion." In a September 18, 2006 witness interview, Mr. Rawski explained that appellant approached him on August 16, 2006 and requested that he lift heavy boxes from her gurney. He stated that appellant

told him that she had work restrictions but that after consulting appellant's medical documentation he was under the impression that appellant had no such restrictions. Mr. Rawski indicated that he and Mr. Masella assisted appellant with the parcels but that he never observed her lifting any of the packages. He stated that appellant "gave no physical or verbal sign of being injured from handling the parcels," that she moved without noticeable pain, and that she did not mention an injury when she returned to the facility after delivering her route. The employing establishment also provided an investigative report noting that no employee observed appellant lifting any of the parcels and that she received physical assistance in handling the parcels and was not responsible for their delivery.

In an October 5, 2006 investigative interview, Debra Pipes, a letter carrier, explained that she was responsible for answering office telephones on the day of appellant's claimed injury and did not recall receiving a telephone call from appellant reporting her injury. She could not recall whether appellant reported any injury after returning from her route on that day. In an October 5, 2006 interview, Jim Radford, acting manager, explained that letter carriers are required to lift up to 70 pounds and, therefore, appellant should have been able to lift the packages when working without restrictions. He reported seeing appellant when she returned from her route on August 16, 2006, and noted that she did not mention an injury. In a September 18, 2006 statement, Donna Varga, a distribution clerk, noted that she had placed the parcels in appellant's gurney. She did not see appellant lift or move any of the parcels on August 16, 2006. Ms. Zindren, appellant's immediate supervisor, stated that appellant advised her on August 16, 2006 that she could not pick up her parcels due to physical restrictions. She explained that Mr. Masella offered to lift the parcels. Ms. Zindren never observed appellant lifting the parcels despite the fact that appellant's gurney was situated near her desk and that she had no recollection of appellant calling to report any difficulties while delivering her route. In a September 18, 2006 interview, Mr. Masella explained that he observed Mr. Rawski lifting parcels from appellant's gurney and offered to assist with the lifting and delivery. He noted that the gurney was in a "very busy" area. Mr. Masella reported that appellant did not seem to be in pain and did not mention an injury after returning from her route. He never observed appellant lifting any of the parcels. Mr. Masella also noted that appellant's gurney was located in a particularly busy area of the workplace. Appellant declined to be formally interviewed by the investigator.

In an April 17, 2006 response, appellant stated that she lifted between six and eight parcels before alerting Mr. Rawski to her difficulties. She stated that Mr. Rawski helped her in "lifting the post." Appellant stated that she called the employing establishment at approximately 2:00 p.m. on August 16, 2006 and informed Ms. Pipes that she was experiencing physical difficulty. She also noted that she informed Mr. Masella of her injuries but was unable to reach a manager.

By decision dated May 4, 2007, the hearing representative affirmed the denial of appellant's claim. The hearing representative modified the Office's prior decision to find that appellant had not met her burden of proof in establishing that the August 16, 2006 lifting incident occurred as alleged.

## ***LEGAL PRECEDENT***

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[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. 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]

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[6] An injury does not have to be confirmed by eyewitnesses in order to establish 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.[7] 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.[8] 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 doubt on an employee's statements in determining whether a *prima facie* case has been established.[9] However, an employee's statement alleging

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[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Victor J. Woodhams*, 41 ECAB 345 (1989).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id.*

[6] *See Louise F. Garnett*, 47 ECAB 639 (1996).

[7] *See Gene A. McCracken*, 46 ECAB 593 (1995).

[8] *See Louise F. Garnett*, *supra* note 6.

[9] *Linda S. Christian*, 46 ECAB 598 (1995).

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.[10]

## ***ANALYSIS***

The Board finds that appellant did not meet her burden of proof in establishing that she lifted mail packages on August 16, 2006 as alleged. As noted above, the first element of "fact of injury" requires that appellant submit evidence establishing that an incident occurred at the time, place and in the manner alleged.[11]

Appellant asserted that she injured her stomach, back and groin when she lifted six to eight heavy parcels from her gurney on August 16, 2006. She stated that she asked for assistance and that Mr. Rawski helped her perform lifting. However, no other employee witnessed appellant lifting the parcels despite the fact that, as Mr. Masella indicated, her gurney was located in a particularly busy area. Ms. Zindren, appellant's immediate supervisor, did not observe appellant lifting any of the parcels despite the fact that appellant's gurney was situated near her desk. Mr. Rawski and Mr. Masella both reported that they lifted the parcels at appellant's request but never saw her lifting them herself. Ms. Zindren noted that Mr. Masella also volunteered to assist appellant. Although appellant stated that she was in excruciating pain after lifting the parcels, her coworkers reported that she did not behave as though she were in pain and in fact continued to prepare for her route without apparent physical difficulty. Appellant stated that she called the employing establishment at 2:00 p.m. and reported her physical difficulties to Ms. Pipes. However, Ms. Pipes had no recollection of receiving a call from appellant while she was on her route or after her return. Appellant also stated that she informed Mr. Masella of her injury, but he did not recall such a conversation. Furthermore, Dr. Nielsen's November 13, 2006 report advised that he was providing his treatment notes of appellant's August 18, 2006 visit. This note, within the November 13, 2006 report, referenced lifting heavy parcels on August 16, 2006. But the physician's earlier submitted August 18, 2006 treatment note did not reference any employment incident occurring on August 16, 2006. The evidence from appellant's coworkers and managers dispute that the claimed lifting incident occurred as alleged.

The Board notes that a claimant's relation of an employment incident carries great probative value and will stand unless refuted by strong or persuasive evidence.[12] Appellant's characterization of the circumstances surrounding her claimed injury is contradicted by numerous witness statements, none of which support that she lifted any parcels on August 16, 2006. Appellant also did not notify the employing establishment of her claimed injury that day and she continued to work without apparent difficulty according to her coworkers' observations. The Board finds that the evidence submitted contains such inconsistencies as to cast doubt on the validity of appellant's claim. Accordingly, the Board

[10] *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

[11] *See supra* note 4.

[12] *See supra* note 10.

finds that appellant has not met her burden of proof in establishing that she experienced an employment-related incident at the time, place and in the manner alleged.[13]

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an injury in the performance of duty.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the May 4, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 15, 2007
Washington, DC

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

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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

[13] As appellant did not establish an employment incident alleged to have caused her injury, it is not necessary to consider any medical evidence. *Bonnie A. Contreras*, 57 ECAB ___ (Docket No. 06-167, issued February 7, 2006).