

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

A.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Kennett Square, PA, Employer**

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**Docket No. 09-1185
Issued: January 27, 2010**

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 1, 2009 appellant filed a timely appeal from the May 23, 2008 and February 17, 2009 merit decisions of the Office of Workers' Compensation Programs denying her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant sustained a traumatic injury on March 21, 2008, as alleged.

FACTUAL HISTORY

On April 1, 2008 appellant, a 43-year-old mail carrier, filed a traumatic injury claim alleging that on March 21, 2008 she twisted her left knee, lower back and shoulder during an altercation with a coworker, Daniel R. Minninger, who pulled and pushed a mail cart while her hands were holding it. She stopped working on March 24, 2008.

On April 2, 2008 the employing establishment controverted the claim. There were no witnesses to corroborate appellant's statements. The employing establishment noted that her actions of unloading her vehicle and cleaning up her route following the claimed incident were inconsistent with a severe injury. Moreover, appellant's own statements reflected that she was more upset than injured.

Appellant submitted a partially legible note dated March 28, 2008 from Dr. John G. Munshower, a Board-certified neurologist, who treated appellant on that date for a "work incident." Dr. Munshower noted appellant's report that she had been hit by a cart on March 21, 2008 and that she was experiencing increased stress, as well as right shoulder and low back pain.

In a March 27, 2008 statement, Mr. Minninger noted that, on March 21, 2008, he was in the process of pitching DHL parcels from one hamper to another when appellant pushed the hamper he was working from out of her way and then pulled another hamper away from the group "as if [he] was n[o]t even working there." He pushed the hamper a little further, gave appellant a disgusted look and went outside to the dock, where other employees were talking. Mr. Minninger denied throwing any parcels at her; that there was no physical contact whatsoever; and that the hamper did not come close to her. He noted that the noise described by appellant might have been caused by a parcel that fell to the floor. Mr. Minninger indicated that appellant often acted rudely, pushing hampers out of her way. In a memorandum dated March 28, 2008, he reiterated that he had no contact with appellant on March 21, 2008. Mr. Minninger stated that, after he went onto the dock, appellant pushed her hampers from the employing establishment to her vehicle, while making arm motions.

On March 31, 2008 appellant stated that, after finishing her route, she had returned to the employing establishment to sort mail into hampers. Because Mr. Minninger's cart was blocking the cart she was trying to secure, she moved it "just a little." Mr. Minninger became angry and pulled out his cart. Because appellant was holding onto his cart at the same time he was pulling it, she injured both arms and legs. She alleged that Mr. Minninger then began throwing parcels to her. When appellant walked outside, she observed a group of coworkers, including her supervisor and Mr. Minninger, talking. She stated that everyone was harassing her.

On March 28, 2008 Coworker Dave Levgero stated that, on March 2008, he heard appellant cry out. When he turned to see what was happening, he observed her waving her hands and heard her tell Supervisor Dave Rose that Mr. Minninger was crazy. Mr. Levgero did not observe any physical contact between appellant and Mr. Minninger.

In a March 28, 2008 report, Mr. Rose noted that, on March 21, 2008, he was sitting at his desk, when he heard what sounded like a parcel hitting the floor. He heard appellant "make an angry sound telling Daniel he was crazy." When Mr. Rose looked in the direction of the noise, he observed that appellant's hands were on a hamper, and Mr. Minninger was walking out of the building. Appellant proceeded to take the hamper out of the building. Mr. Rose did not observe any events prior to the sounds described above. Later that day, appellant's mother telephoned Mr. Rose to inform him that appellant would not calm down. She did not indicate that appellant had sustained any physical injuries.

An April 3, 2008 report from Aston Medical Associates noted the history of injury provided by appellant who was attempting to move a large cart containing mail around another cart when a coworker pulled the cart from the other side. The coworker was allegedly throwing packages into the cart. Appellant pivoted on her left knee at the time of the incident and felt a snap. She reportedly later developed anxiety, sleep disorder, cervical pain and pain with a sense of weakness in the left knee. An April 15, 2008 follow-up report noted that appellant experienced left knee pain and anxiety resulting from a March 21, 2008 incident. The report contained a diagnosis of left posterior horn tear.

On April 7, 2008 Dr. Noi Walkenstein, a Board-certified internist, diagnosed “trauma, pain.” He indicated that appellant should not work from April 11 through 14, 2008.

On April 23, 2008 the Office notified appellant that the evidence submitted was insufficient to establish her claim. It advised her to provide a physician’s report with a firm diagnosis and an opinion as to how her injury resulted in the diagnosed condition. The Office asked appellant to provide a detailed description as to how the injury occurred, including the cause of the injury and statements from any witnesses or other documentation supporting her claim.

In an April 24, 2008 report, Dr. Robert J. Cabry, a Board-certified family practitioner, diagnosed medial meniscus tear. He noted that appellant had been experiencing left knee pain since “a twisting injury at work.” Appellant reported that she had been pushing an old mail cart when it was pulled away from her by another employee. She stumbled and twisted her knee. Appellant also allegedly strained her arm and neck. She submitted an April 8, 2008 MRI scan of the left knee; an April 9, 2008 cervical spine x-ray and an April 23, 2008 physical therapy information sheet.

In an April 30, 2008 attending physician’s report, Dr. Walkenstein diagnosed posthorn tear of the left knee, cervical strain, lumbar sacral (L-S) strain and post-traumatic stress disorder (PTSD). He indicated, by placing a check mark in the “yes” box, that these conditions were caused or aggravated by employment factors. Dr. Walkenstein stated that appellant’s left knee pain was due to a “coworker pulling his cart away from her unexpectedly.”

In an undated statement, received on May 13, 2008, appellant related that, after she was “attacked” by Mr. Minninger, a coworker, Diane Lomas, had asked her if she was “okay.” She told Ms. Lomas that she was not “okay” and that she did not feel safe at the employing establishment. Appellant informed Ms. Lomas that Mr. Minninger had pulled a cart very hard and had thrown a box.

In an April 30, 2008 duty status report, Dr. Walkenstein diagnosed lumbar/cervical sprain/strain and left knee ligament tear. When asked to describe how the injury occurred and which body parts were affected, he responded, “pushing and pulling -- neck, knee, lower back.”

In a May 23, 2008 decision, the Office denied appellant’s claim, finding that she had failed to establish the fact of injury. It found that the evidence was insufficient to establish that the March 21, 2008 incident occurred in the manner alleged.

On June 6, 2008 appellant requested an oral hearing. She submitted copies of documents previously considered by the Office; disability slips from Dr. Cabry from April 24 through June 5, 2008; a June 2, 2008 note from Dr. Walkenstein, which provided diagnoses of cervical sprain/strain and left knee pain due to a traumatic injury; a June 5, 2008 prescription for a left knee sleeve; and disability slips dated August 1 and October 6, 2008 bearing illegible signatures. In a November 20, 2008 statement, C. Lim, a coworker, reported that when he heard appellant's "upset voice" and heard Mr. Minninger yelling, he knew they were arguing about something.

At the November 19, 2008 hearing, appellant testified that, on March 21, 2008, she had walked around Mr. Minninger's cart to get to the "city cart." She tried to move his cart because it was in her way. Mr. Minninger became very angry and "moved his cart rigorously against [her]." He allegedly pulled the cart away from her, causing her to twist her back, neck, shoulder and knee. As Mr. Minninger pulled the cart, he threw a package and yelled, "You [a]re in my way." Appellant stated that the container hit the side of a partition and "smacked it pretty loud." She walked outside after the alleged incident.

In an April 15, 2008 attending physician's report, Dr. Walkenstein again diagnosed left knee meniscus tear, cervical sprain/strain and PTSD. He indicated by placing a check mark in the "yes" box that the injury was causally related to factors of employment. In response to the question as to the history of injury provided, Dr. Walkenstein stated that appellant "forcefully lost balance and subsequently sustained musculoskeletal pain and anxiety."

In an undated statement, Ms. Lomas, a coworker, addressed "the incident in March 2008. She was working the window when she heard appellant say, "What is your problem?" Ms. Lomas heard Mr. Minninger scream, "You [a]re in my way." Then she heard "some commotion," after which she heard Mr. Minninger say, "I am sick of carriers thinking they are the only ones working here."

Appellant submitted medical records relating to an August 19, 2008 left knee arthroscopy; disability slips from Dr. James McGlynn, a Board-certified orthopedic surgeon, from August 29 through November 7, 2008 and copies of records previously submitted.

By decision dated February 17, 2009, the Office hearing representative affirmed the May 23, 2008 decision, finding that the evidence failed to establish that the incident occurred as alleged.

LEGAL PRECEDENT

The Federal Employees' Compensation Act¹ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase "sustained while in the performance of duty" is regarded as

¹ 5 U.S.C. § 8101 *et seq.*

² *Id.* at § 8102(a).

the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."³

An employee seeking benefits under the Act has the burden of proof to establish 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 disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, he must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.⁵

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁶

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁷ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁸

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is

³ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁴ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *See Paul Foster*, 56 ECAB 208 (2004). *See also Betty J. Smith*, 54 ECAB 174 (2002); *Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). *See* 20 C.F.R. § 10.5(q), (ee).

⁶ *See Paul Foster, id.*

⁷ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.⁹

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury on March 21, 2008. There are inconsistencies in the evidence which cast serious doubt on the validity of her claim.

Appellant provided conflicting versions of the alleged incident. In her CA-1 claim form, she indicated that she twisted her left knee, lower back and shoulder during an altercation with a coworker, when he pulled and pushed a mail cart while her hands were holding it. On March 31, 2008 appellant reported that she moved Mr. Minninger's cart "just a little" because it was blocking the cart she was trying to secure. She stated that, while she was still holding onto the cart, he pulled out his cart, injuring her arms and legs, and began throwing parcels at her. On May 13, 2008 appellant related that Mr. Minninger had pulled a cart very hard and had thrown a box. At the November 19, 2008 hearing, she testified that, on March 21, 2008, she tried to move his cart because it was in her way. Mr. Minninger became very angry and "moved his cart rigorously against [her]." He allegedly pulled the cart away from her and twisted her back, neck, shoulder and knee. As Mr. Minninger pulled the cart, he threw a package and yelled, "You're in my way." Appellant stated that the container hit the side of a partition and "smacked it pretty loud." She provided several versions of the facts surrounding the alleged confrontation with her coworker. However, appellant did not present evidence substantiating any of her allegations. Although several coworkers stated that they heard shouting and some commotion, no one witnessed the incident of March 21, 2008. Mr. Minninger strongly disputed appellant's version of the events, asserting that he did not throw any parcels or have any contact with her and that the hamper did not come close to her.

The medical evidence of record also reflects appellant's divergent reports of how the alleged incident occurred. On March 28, 2008 Dr. Munshower reported that appellant had been hit by a cart on March 21, 2008. An April 3, 2008 illness and injury report reflects appellant's statement that she was attempting to move a large cart containing mail around another similar cart when her coworker pulled the cart from the other side on the date in question. Appellant was pivoting on her left knee at the time of the incident and felt a snap. On April 15, 2008 Dr. Walkenstein stated that appellant had "forcefully lost balance and subsequently sustained musculoskeletal pain and anxiety." On April 24, 2008 Dr. Cabry indicated that appellant had been experiencing left knee pain since "a twisting injury at work." Appellant reported that she had been pushing the old mail cart when it was pulled from her, "by accident," by another employee. She allegedly stumbled, twisted her knee and strained her arm and neck. On April 30, 2008 Dr. Walkenstein diagnosed posthorn tear of the left knee, cervical strain, L-S strain and PTSD. He stated that appellant's left knee pain was due to a "coworker pulling his

⁹ *John W. Montoya*, 54 ECAB 306 (2003).

cart away from her unexpectedly.” Appellant did not attempt to reconcile these conflicting reports.

The Board finds that appellant has failed to establish the fact of injury. Appellant did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place and in the manner alleged.¹⁰ The inconsistencies in both appellant’s allegations and the medical evidence of record cast serious doubt on the validity of her claim.¹¹ Appellant initially alleged that she twisted her left knee, lower back and shoulder during an altercation with a coworker, when he pulled and pushed a mail cart while her hands were holding it. In a later version of events, she stated that he “moved his cart rigorously against [her]” and threw a package.” Appellant also alleged that the container hit the side of a partition and “smacked it pretty loud.” She provided no evidence to corroborate any version of alleged facts.

The medical evidence of record, which provides at least four different accounts of the incident. Dr. Munshower reported that appellant had been hit by a cart. Another report reflects that she was pivoting on her left knee at the time of the incident and felt a snap. Dr. Walkenstein stated that appellant had “forcefully lost balance when a coworker pulled his cart away from her unexpectedly. Given the surrounding facts and circumstances, and her subsequent course of action, appellant’s claim lacks credibility. Due to the inconsistencies in the evidence regarding the manner in which the alleged incident occurred, the Board finds that appellant has failed to establish her claim.¹²

On appeal, appellant’s representative contends that the Office’s decisions were contrary to fact and law. For reasons previously stated, the Board finds that his argument is without merit.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on March 21, 2008.

¹⁰ *Betty J. Smith*, 54 ECAB 174 (2002); see also *Tracey P. Spillane*, 54 ECAB 608 (2003). 5 U.S.C. § 8101(5). See 20 C.F.R. § 10.5(ee).

¹¹ See *Betty J. Smith*, *id.*

¹² See *Caroline Thomas*, 51 ECAB 451, 455 (2000).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated February 17, 2009 and May 23, 2008 are affirmed.

Issued: January 27, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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