

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of KENNETH TRUESDELLE and U.S. POSTAL SERVICE,  
GENERAL MAIL FACILITY, Long Beach, Calif.

*Docket No. 97-949; Submitted on the Record;  
Issued November 27, 1998*

---

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty.

On October 1, 1996 appellant, then a 44-year-old distribution clerk, filed a claim for a September 12, 1996 injury, claiming that he has sneezing and sinus irritation from the use of fans in the employing establishment, causing him to snap his cervical and lumbar regions of the spine. He stated that he continued to have back and leg spasms at home and reported that his back locked up when he reached in a cabinet at home. In a November 8, 1996 letter-decision, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that he failed to establish fact of injury.

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

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, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. 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 cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case.<sup>1</sup> The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast doubt upon the validity

---

<sup>1</sup> *Merton J. Sills*, 39 ECAB 572 (1988).

of the claim. However, his statement alleging that an injury occurred at a given time and manner is of great probative value and will stand unless refuted by substantial evidence.<sup>2</sup>

In this case, appellant claimed that he had back pain while sneezing at work on September 12, 1996. Appellant's supervisor stated that on September 12, 1996 the employing establishment was extremely hot so an overhead fan was turned on to provide relief to the employees. The supervisor indicated that appellant almost immediately stated that the fan had to be turned off because it aggravated his sinus condition. The supervisor reported that the fan was turned off. However, appellant did not report any employment-related sneezing caused by the use of the overhead fan until October 1, 1996, almost three weeks after September 12, 1996. Appellant's supervisor indicated that the Office had refused to authorize medical benefits for appellant's back condition unless he could show another employment injury. Appellant's physicians did not report any history of injury as described by appellant until after October 1, 1996. Appellant did not seek medical treatment until September 26, 1994. Appellant's delay in seeking medical treatment and three-week delay in reporting what he contended was an employment injury which caused severe back and neck spasms cast sufficient doubt on his claim as to call into question his claim that the employment injury occurred at the time, place and in the manner alleged. Appellant therefore has not met his burden of proof.

The decision of the Office of Workers' Compensation Programs, dated November 8, 1996, is hereby affirmed.

Dated, Washington, D.C.  
November 27, 1998

Michael J. Walsh  
Chairman

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

---

<sup>2</sup> *Carmen Dickerson*, 36 ECAB 409 (1985).