

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHELLE KUNZWILER and U.S. POSTAL SERVICE,
POST OFFICE, Seattle, WA

*Docket No. 98-2106; Submitted on the Record;
Issued February 24, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on August 18, 1997, as alleged.

On September 12, 1997 appellant, then a 39-year-old letter carrier, filed a claim, alleging that she twisted her ankle on August 18, 1997 while in the performance of duty. By decision dated January 16, 1998, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that she failed to establish that she sustained an injury as alleged.

The Board has duly reviewed the entire case record on appeal and finds that appellant has not established that she sustained an injury in the performance of duty as alleged.

An employee who claims benefits under the Federal Employees' Compensation Act¹ 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.² 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.³ 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.⁴ An employee has not met his or her burden of proof when there

¹ 5 U.S.C. §§ 8101-8193.

² *William Sircovitch*, 38 ECAB 756 (1987).

³ *Charles B. Ward*, 38 ECAB 667 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175 (1984).

⁴ *Merton J. Sills*, 39 ECAB 572 (1988).

are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁵ 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.⁶

In the present case, appellant has not submitted evidence that establishes that she sustained an injury at the time, place and in the manner alleged. Appellant contends that she twisted her ankle on August 18, 1997 when she stepped off the sidewalk into tall grass while delivering the mail and fell, twisting her ankle. However, statements submitted by appellant in connection with her claim indicate that subsequent to the alleged incident, appellant participated in a triathlon on September 7, 1997 in which she swam .5 miles, ran 2.8 miles and biked 14 miles. The first time appellant sought medical attention for her claimed condition was subsequent to the triathlon. In his report dated September 12, 1997, appellant's treating physician, Dr. Steven J. Anderson, noted that appellant had pain prior to the visit for six to seven weeks. However, there is no medical evidence contemporaneous with the date of the claimed injury. Moreover, the affidavit from a coworker supplied by appellant is not corroborative of her statement that she sustained an injury in August 1997. Tamara Brown reported that she did not remember the exact date appellant injured herself but she believed it was the beginning of September. As appellant did not report her claimed injury to anyone, continued to work after she sustained the claimed injury, participated in a rigorous physical competition less than a month after the date of the claimed injury, and did not seek medical attention until after that competition/triathlon, her conduct is not consistent with her claimed injury and casts serious doubt on the validity of her claim. Therefore, appellant has not met her burden of proof in establishing that she sustained an injury on August 18, 1997 as alleged.

⁵ *Tia L. Love*, 40 ECAB 586 (1989).

⁶ *Robert A. Gregory*, 40 ECAB 478 (1989); *Carmen Dickerson*, 36 ECAB 409 (1985).

The decision of the Office of Workers' Compensation Programs dated January 16, 1998 is hereby affirmed.

Dated, Washington, D.C.
February 24, 2000

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member