

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

C.W., Appellant)

and)

U.S. POSTAL SERVICE, JAMES GRIFFITH)
POST OFFICE, Houston, TX, Employer)

**Docket No. 07-613
Issued: July 23, 2007**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 29, 2006 appellant filed a timely appeal from a November 2, 2006 decision of the Office of Workers' Compensation Programs finding that she had not established an injury on September 18, 2006. 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 has met her burden of proof to establish that she sustained an injury in the performance of duty on September 18, 2006.

FACTUAL HISTORY

On September 22, 2006 appellant, then a 46-year-old casual carrier, filed a traumatic injury claim alleging that on September 18, 2006 she injured her back, right thigh and leg while picking up and delivering a tub of mail at a school. The employing establishment controverted the claim. Dalton J. Davis, appellant's supervisor, noted that appellant did not inform him of the injury until September 22, 2006. Mr. Davis also noted that she worked the next two days

following the alleged September 18, 2006 incident. The employing establishment noted that appellant's employment was terminated on September 20, 2006.

In a letter dated October 2, 2006, the Office informed appellant of the medical evidence needed to develop her claim, including a physician's opinion supported by a medical explanation as to how the reported work incident caused or aggravated the claimed injury.

In a September 21, 2006 statement, Roy N. Taylor, Sr. related that appellant was being trained by him on September 16, 18 and 19, 2006. He noted that on September 18, 2006 appellant "took a tub of mail into a school." After returning to the truck they continued to deliver mail. Mr. Taylor stated that appellant at no time mentioned "anything about her back or any other part of her body."

In a September 21, 2006 duty status report (Form CA-17), Dr. Charles K. Speller, a treating physician, diagnosed thoracic lumbar pain with lower extremity radiculopathy. He noted that the injury occurred on September 18, 2006 as a result of appellant "jumping down off [the] postal truck [and] picking up [a] tub of mail." Dr. Speller indicated that she was temporarily totally disabled.

In a statement dated September 21, 2006, appellant related that she injured her back and right leg while picking up mail while she was in training on September 18, 2006. While delivering mail to a school, she asked Mr. Taylor why a dolly was not used for delivery. On September 20, 2006 appellant informed Sheila M. Smith, manager, customer services, that she needed to see a physician on September 20, 2006. Dr. Speller was unable to see appellant on the morning of September 20, 2006 so an appointment was scheduled for that afternoon. Appellant was informed by the employing establishment that she had to report to work at 3:30 p.m. so she was unable to make the medical appointment. She noted that she ran into traffic while going to work so she called the employing establishment to let them "know it was to[o] late for me to keep going." At this point, appellant related that Ms. Smith informed her that she would be terminated if she took off September 21, 2006.

In a September 25, 2006 email, Ms. Smith related that appellant, who had been separated from employment on September 20, 2006, came into the employing establishment on September 21, 2006 requesting CA-1 and CA-16 forms and an OWCP form to file an injury claim. In an attached September 20, 2006 email, Ms. Smith recorded that appellant stated that she was a casual employee on September 18, 2006. She noted that appellant "was only able to work four hours on" September 20, 2006 "and unable to work any hours" on September 21, 2006. Ms. Smith informed appellant in a telephone conversation that she "was terminat[ing] her employment due to attendance."

On October 11, 2006 the Office received a September 21, 2006 Texas workers' compensation work status report, a September 21, 2006 report and a September 27, 2006 attending physician's report (Form CA-20) from Dr. Speller, who noted that appellant sustained a job injury and was totally disabled for the period September 21 to October 21, 2006. Dr. Speller diagnosed traumatic thoracic lumbar radiculopathy. He checked "yes" to the question that he believed the condition had been caused or aggravated by an employment activity. On September 21, 2006 Dr. Speller noted that appellant injured her right leg and lower

back on September 18, 2006 while “jumping in and out of the truck and hand carrying tubs of mail.” Physical findings included pain radiating down into the thigh and knee and pain on palpation of the lumbar spine.

On October 24, 2006 appellant submitted a September 21, 2006 work status report, a September 21, 2006 narrative report and a September 28, 2006 physician’s statement by Dr. Speller and her October 10, 2006 response to questions by the Office. Dr. Speller diagnosed thoracic lumbar radiculopathy and noted that appellant was totally disabled from working. He indicated that appellant was totally disabled for at least six months. Dr. Speller noted that appellant was in training when she injured herself while dropping a large tub of mail at a school. Appellant immediately felt pain in her right thigh/leg and a pulling sensation in her mid to lower back when returning to the postal vehicle. Dr. Speller stated that appellant informed her employer the next day that she was seeking medical care. Appellant sought treatment with him on September 21, 2006 due to her increased symptoms. Dr. Speller related that she was informed that she was terminated when she returned to work following her medical appointment with him. He diagnosed traumatic thoraco-lumbar radiculopathy. A physical examination revealed pain upon “[de]ep palpation of the thoraco-lumbar spine” and pain radiating down the right leg below the knee. Lumbar rotation was noted as 20/20 with pain.

By decision dated November 2, 2006, the Office denied appellant’s claim on the grounds that she had not submitted sufficient evidence to establish that she sustained an injury at the time, place and in the manner 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 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 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

¹ 5 U.S.C. §§ 8101 *et seq.*

² 5 U.S.C. § 8102(a).

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).

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.⁵ 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 her burden of proof in 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 regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹⁰

ANALYSIS

Appellant alleged that she sustained a traumatic injury to her back and right leg on September 18, 2006 while picking up and delivering a tub of mail at a school. The Office denied her claim after finding that she did not establish that the specific incident occurred at the time, place and in the manner alleged.

The Board finds that appellant has established the occurrence of the September 18, 2006 employment incident. Appellant alleged that she injured her lower back and leg on September 18, 2006 picking up and delivering a tub of mail at a school. There is no dispute that she picked up and delivered a tub of mail to a school on September 18, 2006. When the Office requested additional information in its October 2, 2006 letter, appellant provided an explanation in her September 21, 2006 response. Appellant stated that she was in training on September 18, 2006 while delivering mail to a school. She stated that she experienced pain in her leg and back after returning to the truck. On September 20, 2006 appellant informed Ms. Smith that she needed to see a physician. Although the employing establishment controverted the claim and alleged that appellant seemed fine after delivering the tub of mail to the school, the Board finds that there are no significant discrepancies in appellant's account of how the claimed incident occurred. The Board notes that an injury does not have to be confirmed by eyewitnesses in order

⁵ *Barbara R. Middleton*, 56 ECAB ____ (Docket No. 05-1026, issued July 22, 2005).

⁶ See *Thomas L. Agee*, 56 ECAB ____ (Docket No. 05-335, issued April 19, 2005); *Louise F. Garnett*, 47 ECAB 639 (1996).

⁷ See *Betty J. Smith*, 54 ECAB 174 (2002).

⁸ *Deborah S. Stein*, 56 ECAB ____ (Docket No. 04-750, issued April 26, 2005).

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

¹⁰ *Gregory J. Reser*, 57 ECAB ____ (Docket No. 05-1674, issued December 15, 2005).

to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.¹¹ In this case, there are not such inconsistencies in appellant's statement as to cast serious doubt upon the validity of the claim. The Board finds that the September 18, 2006 incident occurred at the time, place and in the manner as alleged.

However, the Board finds that appellant did not meet her burden of proof in establishing a causal relationship between the September 18, 2006 employment incident and her diagnosed thoracic lumbar radiculopathy. Appellant submitted reports from Dr. Speller providing support for causal relationship. Dr. Speller's September 21, 2006 Texas workers' compensation work status report noted that appellant sustained a job injury and was totally disabled, but provided no diagnosis or elaboration on the job injury. In the attending physician's report, Dr. Speller diagnosed traumatic thoracic lumbar radiculopathy. He checked "yes" to the question that he believed the condition had been caused or aggravated by an employment activity. However, the checking of a box yes in a form report, without additional explanation or rationale, is not sufficient to establish causal relationship.¹² Dr. Speller, in a September 21, 2006 report, noted that appellant injured her right leg and lower back on September 18, 2006 while "jumping in an out of the truck and hand carrying tubs of mail." In the September 21, 2006 narrative report, Dr. Speller noted that appellant was in training when she injured herself while dropping a large tub of mail at a school. He noted that she immediately felt pain in her right thigh/leg and a pulling sensation in her mid to lower back when returning to the postal vehicle. Dr. Speller diagnosed traumatic thoraco-lumbar radiculopathy. He concluded that appellant's injury was causally related to the September 18, 2006 employment incident, based on the history provided. Dr. Speller's reports are insufficient to meet appellant's burden of proof in establishing causal relationship, because they are not fortified by sufficient rationale or explanation. The Board has held that a medical opinion not supported by explanation or rationale is of diminished probative value. Dr. Speller did not explain precisely how appellant's actions on September 18, 2006 physically caused her traumatic thoraco-lumbar radiculopathy. Accordingly, the Board finds that Dr. Speller's reports are insufficiently probative on the issue of causal relationship.

Accordingly, the Board finds that appellant failed to meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty because the medical opinion evidence of record does not establish that appellant's diagnosed condition is causally related to the September 18, 2006 employment incident.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty on September 18, 2006.

¹¹ See *Betty J. Smith*, *supra* note 7.

¹² *D.D.*, 57 ECAB ____ (Docket No. 06-1315, issued September 14, 2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 2, 2006 is affirmed as modified.

Issued: July 23, 2007
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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