

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS H. BASSINGTHWAITE and DEPARTMENT OF THE ARMY,
Fort Campbell, Ky.

*Docket No. 96-2042; Submitted on the Record;
Issued October 8, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant sustained an employment injury on June 20, 1991 as alleged.

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the 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 subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.²

The Board finds that appellant has not established that he sustained an employment injury on June 20, 1991 as alleged.

Appellant waited seven days, until June 27, 1991, to report his alleged June 20, 1991 injury.³ Appellant was aware of the procedure for filing a claim, as he previously filed a claim for a June 29, 1987 injury on the date it occurred. Although the local union president, in a May 16, 1994 affidavit, stated that appellant advised him of the June 20, 1991 injury on June 20,

¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

² *Dorothy Kelsey*, 32 ECAB 998 (1981).

³ Although appellant's claim form is dated June 26, 1991, appellant did not work on June 26, 1991 and both appellant and his supervisor submitted statements that the alleged injury was reported on June 27, 1991.

1991 and that he (the union president) spoke to appellant's supervisor that day about appellant using sick leave, the union president's affidavit does not indicate that appellant's supervisor was informed on the injury on the date it allegedly occurred. Appellant's supervisor, in a June 28, 1991 statement, stated that on June 20, 1991 appellant requested annual leave after the supervisor told him he was spending too much time in another employee's work area and that, upon denial of the request for annual leave, appellant "then said put me on sick leave, I'm sick, you have caused me stress and that could be the problem with my neck." On June 24, 1991 appellant called an employee in support services and indicated that his neck pain was related to his June 29, 1987 employment injury. On June 25 and 26, 1991 appellant called in sick; his supervisor noted that appellant related his neck pain at that time to an injury "years back."

Appellant continued to work following his alleged June 20, 1991 employment injury. Appellant explained that on June 21, 1991, a Friday, a farewell party was held for the general and it essentially was a non workday. Appellant, however, worked eight hours on June 24, 1991, performing his regular duties as an automotive mechanic.

Appellant also did not obtain medical care for his alleged June 20, 1991 injury until June 28, 1991. In his August 9, 1991 statement, appellant stated that he made this appointment on June 26, 1991, which is six days after the alleged injury. Moreover, the first medical report that mentions the alleged June 20, 1991 report is the August 13, 1991 hospital admission report. Dr. James F. Bellenger, the family practitioner who saw appellant on June 28, 1991, stated in a November 9, 1992 report that "none of his visits to me were for any direct recent trauma." Dr. Gregory B. Lanford, the Board-certified neurosurgeon, to whom Dr. Bellenger referred appellant, also did not note a history of the June 20, 1991 injury in his July 15, 1991 report, in which he did list a history of the 1987 neck injury.

The above inconsistencies cast serious doubt upon the occurrence of a June 20, 1991 injury as alleged. As found in the Office's March 20, 1996 decision, appellant has not met his burden of proof.

The decision of the Office of Workers' Compensation Programs dated March 20, 1996 is affirmed.

Dated, Washington, D.C.
October 8, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member