U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VICTOR M. QUINONES and DEPARTMENT OF THE ARMY, PROVOST MARSHAL OFFICE, Fort Buchanan, PR

Docket No. 02-211; Submitted on the Record;
Issued September 9, 2002

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has established that he sustained an injury in the performance of duty on May 17, 2000 as alleged.

On June 12, 2000 appellant, then a 53-year-old physical security inspector, filed a claim for a traumatic injury to his back sustained on May 17, 2000 by moving a computer. On the reverse side of appellant's claim form, appellant's supervisor stated that there were no signs that appellant's computer had been touched.

Appellant submitted a June 14, 2000 note from Dr. Roberto D. Alvarez requesting that appellant be excused from work due to a thoracic-lumbar injury.

In response to a request from the Office of Workers' Compensation Programs for further information on his claim, appellant stated, in an August 18, 2000 reply, that on May 17, 2000 he was ordered to move his computer to a different building, that he lifted his computer from the floor and felt back pain after he put it on his desk and that there were no witnesses since the injury occurred after business hours. Appellant also stated that no Office CA-1 form was available at the employing establishment at the time of the injury and that following the injury he first received treatment on May 24, 2000 from Dr. Alvarez, who was already treating him for the same condition.[1]

In a September 5, 2000 statement, appellant stated that the computer he tried to lift from the floor to his desk weighed about 10 pounds, that he consulted Dr. Alvarez who ordered him to take the same medications he had been taking for the same symptoms and that he went to see the physician on May 24, 2000 because the symptoms persisted.

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[1] Also on August 18, 2000 appellant filed a claim for a May 17, 2000 recurrence of disability related to a January 21, 1998 employment injury, citing the incident involving lifting the computer as the cause of his recurrence of disability.

By decision dated December 6, 2000, the Office found that appellant had not established that he had sustained an injury as alleged.

The Board finds that appellant has established that the May 17, 2000 incident occurred as alleged, but that the medical evidence does not establish that this incident resulted in a personal injury.

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.[2] 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.[3]

Appellant did not file a claim for his alleged May 17, 2000 employment injury until June 12, 2000, but contended that a claim form was not available at the employing establishment. The employing establishment did not comment on this contention, or on appellant's contention that he was ordered by his supervisor to move his computer to another building on May 17, 2000. The employing establishment provided contradictory statements on when appellant stopped work following his alleged May 17, 2000 injury: May 18, 2000 on his claim form for a traumatic injury and May 23, 2000 on his claim for a recurrence of disability. Appellant received medical treatment one week after the May 17, 2000 incident, and spoke to his physician, who was already treating him for a similar condition, during the week after the incident.

The statement from appellant's supervisor that there were no signs that appellant's computer was touched is of little evidentiary value, as it provides no basis by which to judge its accuracy. Appellant's supervisor does not state what observation led to this conclusion: undisturbed dust, attached cables, the computer remaining in its customary place. 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.[4] The statement from appellant's supervisor does not constitute strong and persuasive evidence sufficient to refute appellant's statement that he felt pain in his back when moving a computer on May 17, 2000.

[2] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

[3] *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

[4] *Thelma Rogers*, 42 ECAB 866 (1991); *Thelma S. Buffington*, 34 ECAB 104 (1982).

Appellant's burden of proof is not met, however, by establishing that an employment incident occurred as alleged. Appellant has the burden of establishing by the weight of the reliable, probative and substantial evidence that his condition was caused or adversely affected by his employment. As part of this burden he must present rationalized medical opinion evidence, based on a complete factual and medical background, showing causal relation. Neither the fact that the disease became apparent during a period of employment, nor the belief of appellant that the disease was caused or aggravated by employment conditions, is sufficient to establish causal relation.[5] The question of whether an employment incident caused a personal injury generally can be established only by medical evidence.[6]

The medical evidence submitted by appellant is not sufficient to meet his burden of proof. At the time of the Office's final decision on December 6, 2000,[7] the only medical evidence relevant to appellant's claim for a traumatic injury to his back on May 17, 2000 was a June 14, 2000 note from Dr. Alvarez to excuse appellant from work because of a thoracic-lumbar injury. As this note does not contain a history of a May 17, 2000 injury or any statement connecting appellant's condition on June 14, 2000 to such an injury, it is insufficient to meet appellant's burden of proof.

The December 6, 2000 decision of the Office of Workers' Compensation Programs is modified to reflect that the May 17, 2000 incident occurred as alleged, and is affirmed as modified.

Dated, Washington, DC
September 9, 2002

Michael J. Walsh
Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

[5] *Froilan Negron Marrero*, 33 ECAB 796 (1982).

[6] *John J. Carlone*, 41 ECAB 354 (1989).

[7] The Board's review is limited by regulation (20 C.F.R. § 501.2(c)) to "the evidence in the case record which was before the Office at the time of its final decision."