United States Department of Labor
Employees' Compensation Appeals Board

ALEXAS C. JONES, Appellant	)	
and	)	**Docket No. 04-828**
	)	**Issued: August 1, 2005**
DEPARTMENT OF THE NAVY, CONCORD FEDERAL POLICE DEPARTMENT, Concord, CA, Employer	)	

Appearances:
Brook L. Beesley, for the appellant
Office of Solicitor, for the Director

Oral Argument June 23, 2005

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On February 10, 2004 appellant filed a timely appeal from the November 17, 2003 Office of Workers' Compensation Programs' merit decision denying her traumatic injury claim. 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 sustained an injury while in the performance of duty on August 5, 2002.

FACTUAL HISTORY

On August 5, 2002 appellant, then a 29-year-old police officer, filed a traumatic injury claim alleging that she sustained injuries to her right hip on that date as she stepped out of her vehicle. She experienced pain when her right hip "popped" as she twisted to get out and that "it felt like it gave out from under [her]." Appellant submitted medical reports dated August 8 and

11, 2002 indicating a diagnosis of groin muscle, thigh and lumbar strain. In an August 8, 2002 medical report, Dr. Curtis Rogers, a treating physician, stated that appellant was getting out of a jeep when she fell, caught herself and injured her back. Appellant advised the employer that she would not be back to work until August 18, 2002.

In a statement received by the Office on August 26, 2002, Officer Daniel Owens, a coworker, reported that appellant had informed him that she had injured herself while conducting a physical agility test for the California Highway Patrol on August 3, 2002.

The employing establishment controverted appellant's claim, stating that her injury claim was false. It alleged that she had actually injured herself in a physical agility test with the California Highway Patrol; that the injury occurred off-premises; and that she was not involved in official off-premises duties.

By memorandum from the employing establishment dated August 16, 2002, appellant was terminated from her employment during her trial period for absence without leave (AWOL) and sexually-related misconduct.

The record contains numerous work status reports and a narrative medical report from Dr. Rogers, a treating physician, relating to appellant's diagnosed lumbar and groin strains. In responses to the Office's questionnaire dated September 9, 2002, appellant stated that when she was out on the tug pier, she got out of the jeep to look at the tug boats, twisted and heard her hip pop, whereupon her legs "gave out from under [her]." She caught herself on the jeep door to prevent herself from falling. Appellant noted that she previously ran a 100 yard dash and a 500 yard run on August 3, 2002 while participating in a test for the California Highway Patrol, but that she did not injure herself as a result of her participation.

By letter dated October 17, 2003, the employing establishment noted that appellant provided no witness statements that the injury occurred on August 5, 2002. Contrary to her representation, appellant did have a prior left hip injury; that she did not deny that she told a coworker that she was injured in the agility test on August 3, 2002.

By decision dated October 17, 2002, the Office denied appellant's claim, finding that appellant had failed to establish the fact of injury as the inconsistencies in the record cast serious doubt on the validity of her claim.

In a deposition taken January 27, 2003, Officer Owens testified that he had no "direct knowledge or first-hand observation" that appellant hurt herself during the physical agility test. He further testified that appellant told him that she had "failed the run" by a couple of seconds. Officer Owens was asked, "You do n[o]t have any information she was hurt or not at this physical agility, correct?" He responded, "No, I do n[o]t."

An oral hearing was held on July 29, 2003. Appellant testified that she had a previous hip injury, for which she received a 10 percent disability rating. She underwent an agility test on August 3, 2002 for the California Highway Patrol, but did not injure herself. She described the incident of getting out of a jeep on August 5, 2002. Appellant further testified that she never told Officer Owens that she injured herself during the agility test and that Officer Owens had made a false allegation because she had previously rejected his sexual advances.

By decision dated November 17, 2003, the Office hearing representative affirmed the denial of appellant's claim, finding that appellant had not submitted sufficient evidence to overcome the inconsistencies of record.

At an oral hearing before the Board on June 23, 2005, the Solicitor's representative argued that inconsistencies in the record cast serious doubt on the validity of appellant's claim. Appellant's representative contended that she was consistent in her description of the time, place and manner in which the alleged August 5, 2002 incident occurred. Her representative argued further that, in a January 23, 2004 deposition, her coworker had recanted his statement that appellant had actually been injured during an agility test on August 3, 2002 thereby eliminating any inconsistencies in the record.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of proof to establish the essential elements of her 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.[1] When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged and that such event, incident or exposure caused an injury.[2]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[3]

ANALYSIS

The Office hearing representative found that appellant failed to submit sufficient evidence to establish that the August 5, 2002 event occurred as alleged and that numerous inconsistencies in the record defeated her claim. The Board finds that appellant has established that the August 5, 2002 incident occurred at the time, place and in the manner alleged.

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[1] *Paul Foster*, 56 ECAB ___ (Docket No. 04-1943, issued December 21, 2004). *See also Robert Broome*, 55 ECAB ___ (Docket No. 04-93, issued February 23, 2004); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[2] *Betty J. Smith*, 54 ECAB ___ (Docket No. 02-149, issued October 29, 2002); *see also Tracey P. Spillane*, 54 ECAB ___ (Docket No. 02-2190, issued June 12, 2003). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

[3] *See Paul Foster*, *supra* note 1; *see also Betty J. Smith*, *supra* note 2.

The Board has held that a claimant's statement that an injury occurred at a given time, place and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[4] Moreover, 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 her subsequent course of action.[5] In the instant case, appellant filed her CA-1 form on the date of the alleged injury, claiming that as she stepped out of her vehicle, she experienced extreme pain when her right hip "popped" as she twisted to get out and that "it felt like it gave out from under [her]." Medical reports from Dr. Rogers dated August 8 and 11, 2002, corroborate appellant's history of the incident, indicating that she was getting out of a jeep when she caught herself and injured her back. In responses to the Office's questionnaire dated September 9, 2002, appellant stated that when she was out on the tug pier, she got out of the jeep to look at the tug boats, twisted and heard her hip pop, whereupon her legs "gave out from under [her]" and she caught herself on the jeep door to prevent herself from falling. Finally, at the July 29, 2003 hearing, appellant testified that she injured herself getting out of a jeep on August 5, 2002. The Board finds that appellant's description of the incident is consistent in the facts surrounding August 5, 2002. The relevant facts are that, on August 5, 2002 she was on the tug pier when, as she twisted to get out of her jeep, her right hip popped, causing pain. The Board finds that the August 5, 2002 incident is established.

The Office hearing representative did not explain his rationale for denying appellant's claim. However, stating that appellant had failed to overcome the numerous inconsistencies in the file, he highlighted Officer Owens' undated statement, in which he noted that appellant had informed him that she had injured herself while conducting a physical agility test for the California Highway Patrol on August 3, 2002. The Board notes, however, that in his January 27, 2003 deposition, Officer Owens testified under oath that he had no information concerning whether appellant was actually hurt during the physical agility test. This reduces the probative value of his unsworn statement relied upon by the Office in denying the claim. The Board finds appellant's statement of facts to be consistent with the facts and circumstances of the case and her subsequent course of action.

Since the Office did not address the sufficiency of the medical evidence, the case will be remanded to the Office for further development to determine whether the August 5, 2002 incident resulted in a compensable injury. Thereafter, the Office should issue a *de novo* decision on the issue of whether appellant sustained an injury in the performance of duty on August 5, 2002, as alleged.

CONCLUSION

The Board finds that appellant established that the August 5, 2002 incident occurred at the time, place and in the manner alleged. On remand, following any necessary further development, the Office should issue a *de novo* decision on the issue of whether the August 5, 2002 employment incident resulted in a compensable injury.

[4] *Thelma Rogers*, 42 ECAB 866, 869-70 (1991).

[5] *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 17, 2003 is set aside and the case remanded for further proceedings consistent with this opinion.

Issued: August 1, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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