

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

R.P., Appellant

and

**DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL
CENTER, Brockton, MA, Employer**

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**Docket No. 10-345
Issued: August 23, 2010**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 18, 2009 appellant filed a timely appeal from an October 13, 2009 merit decision of the Office of Workers' Compensation Programs that denied his 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 established he sustained an injury in the performance of duty on February 13, 2008.

FACTUAL HISTORY

On August 18, 2009 appellant, a 48-year-old pipe fitter, filed a traumatic injury claim (Form CA-1) for second- and third-degree burns on his left arm that he attributed to a February 13, 2008 incident when a pipe he was repairing "broke" and "steam flashed."

By letter dated September 4, 2009, the Office informed appellant that he had not submitted sufficient information to establish his claim. Appellant was asked to provide a

detailed description of how his injury occurred and a narrative medical report from his treating physician discussing the injury.

Appellant submitted hospital records, dated December 2, 2005, signed by Dr. Christina L. Boulton, an orthopedic surgeon, who diagnosed a second-degree burn on appellant's left wrist. He also submitted a note, dated September 14, 2009, in which he authorized his wife to receive copies of his medical records and bills concerning "injuries [he] sustained on or about November 3, 2005."

On October 8, 2009 appellant provided a statement in which he explained that his injury occurred in a laundry room while he was working on a high pressure steam line. He noted that after he unscrewed the nipple, water came out of the line and burned his left arm. Appellant did not provide a date for this alleged incident.

By decision dated October 13, 2009, the Office denied the claim because appellant failed to establish that the alleged event occurred.

LEGAL PRECEDENT

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.³ An employee has not met his or her burden of proof of 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.⁴ 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁵

ANALYSIS

Appellant attributed his alleged injury to a February 13, 2008 incident when a pipe he was repairing "broke" and "steam flashed." When an employee claims that he sustained an injury in the performance of duty, he must submit sufficient evidence to establish that he

¹ 5 U.S.C. §§ 8101-8193.

² *D.B.*, 58 ECAB 464 (2007); *George W. Glavis*, 5 ECAB 363, 365 (1953).

³ *M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *George W. Glavis*, *supra* note 2.

⁴ *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

⁵ *M.H.*, *supra* note 3; *John D. Shreve*, 6 ECAB 718, 719 (1954).

experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged.⁶ This is a question of fact that can be proven by medical or lay opinion evidence.

To support his claim, appellant submitted Dr. Boulton's December 2, 2005 report and a note, dated September 14, 2009, in which appellant authorized his wife to receive copies of his medical records and bills regarding his November 3, 2005 injury. As noted above, 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,⁷ but Dr. Boulton's report pertains to a date of injury years prior to February 13, 2008 and appellant's September 14, 2009 note also pertains to an alleged injury of November 3, 2005, not February 13, 2008. Thus, this evidence contradicts that the February 13, 2008 incident actually occurred as alleged.

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one, which can be identified on visual inspection.⁸ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁹

In this case, however, appellant has only submitted evidence regarding a left arm burn, which occurred years prior to the date of injury. The Board must therefore find that appellant has not established a left arm burn on February 13, 2008.

An award of compensation may not be based on surmise, conjecture or speculation. Because appellant did not submit sufficient evidence demonstrating the alleged February 13, 2008 incident actually occurred as alleged, the Office properly denied his claim.

CONCLUSION

The Board finds that appellant has not established he sustained an injury in the performance of duty on February 13, 2008.

⁶ See *E.A.*, 58 ECAB 677 (2007); *Arthur C. Hamer*, 1 ECAB 62 (1947).

⁷ *S.P.*, *supra* note 4; *Wanda F. Davenport*, 32 ECAB 552 (1981).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

⁹ *A.S.*, 59 ECAB ____ (Docket No. 07-1701, issued December 10, 2007); *Naomi A. Lilly*, 10 ECAB 560, 573 (1959).

ORDER

IT IS HEREBY ORDERED THAT the October 13, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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