

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIE L. McFARLAND and VETERANS ADMINISTRATION,
MEDICAL CENTER, Dallas, Tex.

*Docket No. 96-1610; Submitted on the Record;
Issued July 6, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant met his burden of proof to establish that he sustained a back injury in the performance of duty on April 20, 1995.

The Board has duly reviewed the case record in the present appeal and finds that appellant did not meet his burden of proof to establish that he sustained a back injury in the performance of duty on April 20, 1995.

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 However, an

¹ 5 U.S.C. §§ 8101-8193.

² *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

³ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁴ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁵ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

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.⁶

In the present case, there are such inconsistencies in the evidence as to cast doubt upon the validity of appellant's claim that he sustained an employment injury on April 20, 1995. In a traumatic injury claim (Form CA-1) dated May 5, 1995, appellant indicated that on April 20, 1995 he felt a "pull and slipping sensation" in his mid back when a patient he was transporting leaned forward in his wheelchair.⁷ Appellant did not provide any explanation for why he delayed in filing a claim for his alleged injury. The medical evidence of record indicates that appellant first sought medical treatment for back problems on April 27, 1995 in the emergency health unit at the employing establishment. Although he indicated that he sustained an injury on April 20, 1995 while pushing a patient, he was unable, upon questioning, to identify a specific incident which might have caused his injury. Appellant did not explain why he delayed in seeking medical treatment; nor did he explain why he was unable to identify a specific incident when he reported his alleged April 20, 1995 injury on April 27, 1995, yet he was able to provide specific details when he filed his Form CA-1 on May 5, 1995. The record contains statements in which a supervisor indicated that appellant advised him on April 25, 1995 that he had sustained an employment-related injury but was unable upon questioning to cite a specific incident or accident. The medical record of evidence does not contain any description of an April 20, 1995 incident similar to that described in appellant's May 5, 1995 Form CA-1. The Board notes that appellant's late notification and seeking of medical treatment and his inconsistencies in reporting the nature of the injury are sufficient to refute his claim that he sustained a back injury in the performance of duty on April 20, 1995. For these reasons, the Office properly determined in its March 14, 1996 decision that appellant did not meet his burden of proof to establish that he sustained an employment-related injury on April 20, 1995.

The decision of the Office of Workers' Compensation Programs dated March 14, 1996 is affirmed.

Dated, Washington, D.C.
July 6, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁶ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

⁷ Appellant indicated that the incident occurred at 12:55 p.m.