

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID ELLIS and GENERAL SERVICES ADMINISTRATION,
HUMAN RESOURCE DIVISION, Phoenix, AZ

*Docket No. 00-236; Submitted on the Record;
Issued January 4, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, PRISCILLA ANNE SCHWAB,
VALERIE D. EVANS-HARRELL

The issue is whether appellant met his burden of proof in establishing that he sustained an injury to his back in the performance of duty.

On July 8, 1999 appellant, then a 52-year-old transportation assistant, filed a traumatic injury claim, alleging that on July 6, 1999, he lifted a box containing license plates. He claimed he felt a sharp pain in his lower back, at the site of a previous back surgery. Appellant's supervisor indicated that appellant stopped work on July 7, 1999 and has not returned.

The record contains statements dated June 7, 1999 from appellant's coworkers. They indicate that he pulled 25 sets of license plates in small groups which when lifted collectively, would "weigh approximately 15 pounds total."

The employing establishment also forwarded a work status report, which indicated that appellant was seen on July 7, 1999 by Dr. Jeffrey Steeno, an internist, who returned appellant to regular duty on July 14, 1999. He indicated that appellant had mechanical back pain.

By letter dated July 20, 1999, the Office of Workers' Compensation Programs advised appellant of the additional medical and factual evidence needed to support his claim. In particular, appellant was directed to provide a physician's reasoned medical opinion, including a discussion by his physician on the causal relationship between appellant's claimed injury and specific employment factors.

In response to the Office's letter, appellant submitted an undated narrative history of his past and current back problems.

By decision dated August 24, 1999, the Office denied appellant's claim. The Office found that appellant failed to provide the requested medical report to support that his back injury was causally linked to the alleged work incident. Additionally, the Office found that appellant's statement regarding the alleged incident was directly contradicted by the statements of his

coworkers. Therefore, the Office determined that appellant failed to submit sufficient evidence regarding the circumstances of his claimed injury. The Office concluded that appellant had not established that the claimed incident occurred on July 6, 1999.¹

The Board finds that appellant failed to meet his burden of proof in establishing that he sustained an injury in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his or 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 limitations period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵

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 or her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. 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. However, 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.⁶

¹ Evidence of record indicated that appellant had filed an occupational disease claim for a lumbar sprain, which was adjudicated under File No. 13-587445 and was accepted as work related. The occupational disease claim is not before the Board on this appeal.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *Elaine Pendleton*, *supra* note 3.

⁶ *Michelle Kunzwiler*, 51 ECAB ____ (Docket No. 98-2106, issued February 24, 2000); *Caroline Thomas*, 51 ECAB ____ (Docket No. 98-2353, issued April 6, 2000).

The second component is whether the employment incident caused a personal injury which generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed, and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁷

The Board finds that the record contains sufficient evidence to establish that appellant lifted license plates weighing about 15 pounds on July 6, 1999. While witness statements questioned the precise number of plates lifted by appellant, they do indicate that he lifted plates and do not establish that he did not lift the plates as alleged.⁸ Consequently, the Board finds that the license plate lifting occurred on July 6, 1999.

Regarding the second component, there is insufficient medical evidence to establish that appellant sustained an injury on July 6, 1999. Specifically, the only medical evidence submitted in this case consisted of an occupational work status report signed by Dr. Steeno. While this report indicated that appellant was suffering from mechanical back pain, it does not support appellant's contention that he injured his back on July 6, 1999 while lifting license plates. Dr. Steeno did not provide a history of injury or address the cause of appellant's back condition.

As noted above, part of appellant's burden of proof includes the submission of medical and factual evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted medical or factual evidence establishing any specific injury on July 6, 1999, he has not met his burden of proof.

⁷ See 20 C.F.R. § 10.115(a)(1999); *Kathryn Haggerty*, 45 ECAB 383 (1994); *John M. Tornello*, 35 ECAB 234 (1983).

⁸ There is a long-recognized general rule of evidence that all things being equal positive evidence is stronger than negative evidence. *Brodrick L. Harrell*, 51 ECAB___ (Docket No. 98-2263, issued September 27, 2000).

The decision of the Office of Workers' Compensation Programs dated August 24, 1999 is affirmed as modified.

Dated, Washington, DC
January 4, 2001

Michael J. Walsh
Chairman

Priscilla Anne Schwab
Alternate Member

Valerie D. Evans-Harrell
Alternate Member