U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAMIAN R. SAUER and DEPARTMENT OF THE INTERIOR, NATIONAL PARK SERVICE, Port Angeles, WA

Docket No. 03-1925; Submitted on the Record;
Issued October 6, 2003

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an employment injury in the performance of duty on July 22, 2002.

On July 23, 2002 appellant, then an 18-year-old forestry technician, filed a Form CA-1 claim for traumatic injury alleging that on July 22, 2002 he sustained an injury due to an ingrown toenail on his right foot. The location of the injury was noted as the "tool box fire" in the "back country." Appellant did not stop work but he received medical treatment at Bend Memorial Clinic, Bend, Oregon, on July 23, 2002.

In a letter dated February 13, 2003, the Office of Workers' Compensation Programs advised appellant that he needed to provide further information to support his claim, including a description of what he was doing when injured, statements from witnesses confirming injury, and a description of his condition. The Office also requested that medical evidence identifying the injury and providing an opinion on causal relation be submitted and it gave appellant 30 days within which to provide the requested evidence

In response appellant submitted a July 23, 2002 unsigned medical report from Dr. J. Randall Jacobs, a physician of unlisted specialty, who identified appellant's problem as "Paronychia right great toe with ingrown nail," and stated as history that appellant was a "fire fighter on the tool box fire," and presented "with several days of pain, swelling and redness over the lateral paronychial tissue of his great right toe." He noted that appellant had "paronychial redness, swelling of the tissue laterally along the right great toenail, which [was] ingrown and clipped too short." Dr. Jacobs performed a digital block and partial nail excision, as appellant wished to return to his fire fighting crew. He diagnosed "[p]artial nail avulsion due to paronychia and ingrown nail right great toenail," and noted that the lateral 15 percent of the nail was removed completely. Appellant was advised to soak his foot twice daily and to apply topical antibiotic ointment.

Nothing further was received by the Office.

By decision dated March 13, 2003, the Office rejected appellant's claim finding that he had not submitted sufficient evidence to establish that a specific exposure or incident occurred at the time, place, and in the manner alleged. The Office noted that the claim form omitted any description or information on how the toe injury happened or was caused by his employment, and Dr. Jacobs' report also lacked identification of the triggering event or incident, as well as lacking any opinion on causal relation.

The Board finds that appellant has failed to establish that he sustained an employment injury in the performance of duty on July 22, 2002.

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing 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 limitation 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.[2] These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[5]

In this case appellant did not describe how his toe injury occurred and did not provide any witness statements confirming its occurrence. Although he sought medical treatment the day after the alleged incident, the treating physician, Dr. Jacobs, did not provide any history of injury and, in fact, noted that appellant had been symptomatic for several days with pain, swelling and redness over the lateral paronychial tissue of his great right toe. This history does not support that the injury occurred the day before he was treated, as he claimed. Moreover, the report was

[1] 5 U.S.C. §§ 8101-8193.

[2] *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *Delores C. Ellyett*, 41 ECAB 992 (1990).

[4] *John J. Carlone*, 41 ECAB 354 (1989). 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 his 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 sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

[5] *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

unsigned thereby further diminishing its probative value.[6] No other evidence supporting that an injury to appellant's right great toe occurred on July 22, 2002, was submitted.

As appellant failed to provide an accurate, detailed or consistent history of injury, witness or supervisory statements, or a comprehensive medical report containing a complete history of injury, the occurrence of an injurious event or incident could not be established, and therefore appellant has failed to meet his burden of proof.

Accordingly, the decision of the Office of Workers' Compensation Programs dated March 13, 2003 is hereby affirmed.

Dated, Washington, DC
October 6, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

[6] The Board has held that any medical evidence the Office relies upon to resolve an issue must be in writing and signed by a qualified physician. *James A. Long*, 40 ECAB 538 (1989).