

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of HECTOR J. GARZA and DEPARTMENT OF JUSTICE,  
IMMIGRATION & NATURALIZATION SERVICE, San Diego, CA

*Docket No. 03-1431; Submitted on the Record;  
Issued September 10, 2003*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether appellant sustained an injury in the performance of his federal duties.

On March 14, 2003 appellant, then a 37-year-old deportation officer, filed a notice of traumatic injury and claim for compensation (Form CA-1), alleging that on August 13, 2002 while conducting a fugitive operation he stepped down from a transport vehicle after placing a detainee under arrest and felt a muscle spasm in his back. On the reverse side of the claim form, Deidre Hicks, appellant's supervisor, indicated that the employing establishment received notice of injury on August 13, 2002, for an injury which occurred on that date, and certified that the information given by appellant was true to the best of her knowledge.

In support of the claim, appellant submitted a progress report from Dr. Robert Maywood, a Board-certified orthopedic surgeon, dated August 13, 2002, which diagnosed appellant with lumbar strain for an injury the physician reported as having occurred on August 12, 2002. In the report, Dr. Maywood recommended that appellant perform limited duty until August 27, 2002 and returned appellant to work that day.

In a March 18, 2002 letter, the Office of Workers' Compensation Programs advised appellant that the evidence submitted in support of the claim contained a discrepancy as to the date of injury. The Office therefore requested more information, including the correct date of injury and medical evidence supporting a causal relationship of the diagnosed condition and his employment activity. No further information was received.

In a decision dated April 28, 2003, the Office denied appellant's claim on the grounds that he failed to establish that he sustained an injury in the performance of duty on August 13,

2002 as alleged. The Office found that appellant was advised of the deficiencies in his claim in a letter dated March 18, 2003; however, no further evidence was received to establish the claim.<sup>1</sup>

The Board finds that appellant has not met his burden of proof to establish *prima facie* that an injury occurred in the performance of his federal duties.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> 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.<sup>3</sup> These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

The injury does not have to be confirmed by eyewitnesses in order to establish that the 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.<sup>7</sup> Such circumstance such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to

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<sup>1</sup> With his appeal appellant submitted additional evidence. On appeal appellant contends that on August 12, 2002 he filed a claim after his work-related injury and then sought medical attention. Appellant states that he was later notified that his claim had been lost or never received so he re-filed his claim five months later. Appellant contends that in re-filing the claim, he made a mistake in filling out the date of injury, which has prevented his claim from being approved. He further notes that he never received the Office letter dated March 18, 2003 which advised him of discrepancy with the date of injury. However, the Board may not consider new evidence on appeal; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting new evidence to the Office and requesting reconsideration pursuant to 5 U.S.C. § 8128(a).

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>4</sup> *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>5</sup> *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- *Claims, Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354, 356-57 (1989); *see* Federal (FECA) Procedure Manual, Part 2 -- *Claims, Fact of Injury*, Chapter 2.803.2a (June 1995).

<sup>7</sup> *Theodore W. Manginen*, 15 ECAB 57 (1963).

obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statement in determining whether the claimant has established a *prima facie* case.<sup>8</sup> The employee has the burden to establish that the injury occurred at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>9</sup>

In this case, appellant alleged on the claim form that he sustained an injury to his back on August 13, 2002 while stepping down from a transport vehicle after an arrest. A date of August 13, 2002 was also noted as the date in which the injury occurred on the supervisor's portion of the traumatic injury claim form. Prior to the April 28, 2003 Office decision, appellant had only submitted an August 13, 2002 progress report from Dr. Maywood in which he diagnosed appellant with a lumbar strain and noted a date of injury of August 12, 2002. Dr. Maywood did not provide any history of the injury as related by appellant, or opinion as to the cause of appellant's diagnosed condition. Because Dr. Maywood's report lacked any details regarding history of injury, it is impossible to reasonably infer that appellant sustained injury or received treatment from Dr. Maywood for the alleged work injury of August 13, 2002.

In a March 18, 2003 letter, the Office requested further clarification as to the date of injury, whether the claimed injury occurred on August 13, 2002 as stated by appellant in his claim or August 12, 2002, as identified by Dr. Maywood; however, no further information was received. The Board notes that appellant provided an account of the facts and circumstances surrounding his injury; however, the March 2003 claim form and the August 13, 2002 medical report raised a question of inconsistency as to the time, place and manner of the injury which was not explained by appellant or by further medical evidence prior to the April 28, 2003 decision. Appellant has therefore not established that the incident occurred as alleged. Further, the Board notes that appellant has not submitted any rationalized medical evidence to establish that he sustained an injury on August 13, 2002 causally related to the alleged incident. Therefore appellant has failed to meet his burden of proof in this case.

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<sup>8</sup> *George W. Clavis*, 5 ECAB 363 (1953).

<sup>9</sup> *Charles A.J. Cooley*, 15 ECAB 115 (1963).

The decision of the Office of Workers' Compensation Programs dated April 28, 2003 is affirmed.

Dated, Washington, DC  
September 10, 2003

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member