

Appellant, a 53-year-old food service worker, filed a (Form CA-2) claim for benefits on February 26, 2007, alleging that she strained her right shoulder on February 12, 2007 while trying to turn a food cart and prevent it from tipping over. She stated on the form that “I cannot remember the exact date this injury occurred; shoulder worsened with continued pushing of carts.”

By letter dated March 2, 2007, the Office advised appellant that she needed to submit additional factual and medical evidence in support of her claim. It stated that appellant had 30 days to submit the requested information.

In a statement dated March 23, 2007, appellant stated:

“I was working at [the employing establishment] at the nursing home. I had complained previously about the condition of the food dispensing kart wheels. The wheels do not turn or swivel as they should. On February 12 I was trying to make a right turn with a fully loaded kart and the wheels locked up and started to fall to the right. As a reflex I grabbed the kart and righted the kart and I felt a sharp pain shoot through my shoulder. I screamed and my coworker came running to see what happened. I have gone to my doctor and took an x-ray but he needs authorization from workmans comp to see a specialist. In my daily life I still have problems getting dressed and I work with the pain.... I have been on light duty....”

By decision dated April 3, 2007, the Office denied appellant’s claim, finding that she failed to submit sufficient medical evidence in support of her claim. It accepted that the February 12, 2007 work incident had occurred; however, it stated that she failed to submit medical evidence establishing that she sustained a condition or disability resulting from the February 12, 2007 work incident.

In a February 12, 2007 form report, Dr. William C. Beck, a Board-certified family practitioner, indicated that appellant was experiencing shoulder pain as of February 12, 2007. In an April 9, 2007 report, he stated that appellant had chronic right shoulder pain and diagnosed right-sided impingement syndrome. Dr. Beck stated that appellant could return to modified duty as of May 2, 2007, with no pushing or pulling.¹

Appellant submitted a May 4, 2007 magnetic resonance imaging (MRI) scan from Dr. Scott Werden, Board-certified in radiology, who stated that the MRI scan results indicated a moderate acromioclavicular degenerative change, with moderate inferior surface spurring. Dr. Werden opined that the MRI scan also showed moderate bony impingement on the rotator cuff from the lateral aspect of the acromion and from the inferior surface of the acromioclavicular joint. In addition, he stated that appellant had a fairly extensive superior labrum lesion; a moderate amount of fluid in the intertubercular groove was consistent with tenosynovitis and the tendon appeared to be partially subluxed.

On April 18, 2007 appellant requested an oral hearing, which was held on September 27, 2007. At the hearing, she reiterated that she injured her right shoulder when she tried to stop a cart from falling. Appellant stated that she screamed when the incident occurred and that her screams were overheard by a coworker, Thelma Wilson, who came to her aid. She stated that she then told Ms. Wilson what had occurred and described the injury to her. Appellant further testified that she informed her supervisor, Barbara Forbes, about the

¹ The record also contains a disability slip dated April 17, 2007 from a physician which indicates that she could return to modified duty for four hours per day as of April 18, 2007. The slip contains an illegible signature from a physician.

February 12, 2007 work incident and that Ms. Forbes told her she would put in a work order for the carts. She was asked at the hearing why she submitted a Form CA-2 for occupational illness despite the fact that she had alleged she experienced a traumatic injury on February 12, 2007. Appellant stated that she merely completed the form that she was given, although she acknowledged stating on the form that she was unable to remember the exact date the injury occurred and that the shoulder worsened with continued pushing of carts.

In a report received by the Office on October 16, 2007, Dr. Beck stated:

“[Appellant] has been a patient of mine for many years. I saw her in my office on February 12, 2007 with a complaint of right shoulder pain for two weeks. She denied any known injury. I diagnosed her with shoulder pain. I ordered an x-ray and prescribed Naprosyn. The x-ray revealed mild arthritis. She was seen again on March 2, 2007 with the same problem. At that time [appellant] recalled that she had suffered an on-the-job injury on February 12, 2007 and reported this to her supervisor. I made a diagnosis of impingement syndrome and referred her to an orthopedist who confirmed the diagnosis. In my opinion this is a work-related injury.”

Ruth A. Sachen, appellant’s supervisor, submitted an October 30, 2007 letter in which she responded to appellant’s hearing testimony. With regard to appellant’s statement that she was injured on February 12, 2007, when the cart almost tipped over, Ms. Sachen stated:

“[Appellant] called in sick and was not at work on February 12, 2007. [She] stated that she was unable to work on February 12, 2007 due to a shoulder injury. However, medical documentation provided only indicated that [appellant] was incapacitated [for] work and did not indicate the reason for her absence nor did it state that her absence was the result of an on-the-job injury. [She] provided additional medical documentation, dated February 13, 2007, indicating that an x-ray was performed. Again, medical documentation did not indicate the reason for the x-ray. [The] doctor’s first report of occupational injury or illness form was not completed by appellant until March 2, 2007.”

With regard to appellant’s statement that she told supervisor Ms. Forbes about her injury, Ms. Sachen stated:

“[Ms.] Forbes, cook supervisor, stated that [appellant] never mentioned her injury had occurred on the job. [She] does remember having a conversation with [appellant] regarding [her] possibly having arthritis or bursitis in her shoulder. [Appellant] and Ms. Forbes discussed the number of aches and pains they are experiencing as they get older. Ms. Forbes was under the impression that [appellant’s] shoulder problems were related to a chronic condition and not an on-the-job injury.”

With regard to appellant's statement at the hearing that she was not aware of the type of claim form she was filing, one for traumatic injury or occupational illness, Ms. Sachen stated:

"On February 26, 2007 [appellant] came to my office and asked me to input an accident report for her since her immediate supervisor, [Ms.] Forbes, was on leave. [She] stated that she had an accident at work and had informed Ms. Forbes but Ms. Forbes had not inputted an accident report. [Appellant] stated that she had an x-ray done on her shoulder and now required an MRI [scan]. [She] wanted to make sure an accident report was submitted in order to cover the MRI [scan] that needed to be performed. I assisted [appellant] to submit an accident report and file a claim with [the Office].

"[Appellant] stated that she pulled her shoulder muscle when she stopped a food transport cart from falling over. When asked when the injury occurred, [she] could not remember when the injury occurred. [Appellant] was also asked when she first saw her doctor regarding her shoulder and if she had any medical documentation. [She] stated that she did not see her physician immediately after the injury occurred. [Appellant] went to her physician after progressive pushing of carts resulted in continued shoulder pain.

"I informed [appellant] I was going to fill out a CA-2 [form]; Notice of Occupational Disease and Claim for Compensation since the shoulder pain seemed to occur over time. The CA-2 [form] was completed and signed by [appellant]."

By decision dated December 12, 2007, an Office hearing representative affirmed the April 3, 2007 Office decision as modified. The hearing representative found that based on the evidence of record appellant had failed to establish the alleged work incident.

LEGAL PRECEDENT

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 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.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 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

² 5 U.S.C. § 8101 *et seq.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

the employment incident at the time, place and in the manner alleged.⁵ 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.⁶

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged or whether the alleged injury was in the performance of duty.⁷ Nor can it find fact of injury if the evidence fails to establish that the employee sustained an “injury” within the meaning of the Act. 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, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and her subsequent course of action.⁸ 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 cast doubt on an employee’s statements in determining whether he or she has established his or her claim.⁹

ANALYSIS

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged. She stated on her CA-2 form that she remembered injuring her right shoulder on February 12, 2007 while trying to turn a cart to prevent it from tipping it over. However, this statement was contradicted by her additional statement on the Form CA-2 in which she indicated that she was unable to remember the exact date of injury and that her right shoulder pain had worsened over time with continued pushing of carts. Further, it is hard to comprehend how appellant’s lack of awareness of which form to file -- which she claimed at the hearing -- could account for the discrepancies in the accounts of injury she provided to several different people. Appellant can be reasonably imputed to have knowledge of when she sustained an injury that caused her to be medically released from work.¹⁰ This contradictory evidence created an uncertainty as to the time, place and in the manner in which appellant sustained her alleged lower back injury. Further, the employing establishment indicated that appellant was on sick leave and was not at the worksite on February 12, 2007, the date the incident allegedly occurred.¹¹

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(e)(e).

⁷ *Elaine Pendleton*, *supra* note 3.

⁸ *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); see *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995);

⁹ See *Constance G. Patterson*, 42 ECAB 206 (1989).

¹⁰ The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. See generally *Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

¹¹ *Id.*

Appellant's treating physician, Dr. Beck, stated in his October 16, 2007 report that he saw appellant in his office on February 12, 2007 with a complaint of experiencing right shoulder pain for two weeks. During this visit, she denied any known injury; however, when Dr. Beck saw her again on March 2, 2007 for complaints of right shoulder pain, appellant alleged that she had suffered an on-the-job injury on February 12, 2007, which she reported to her supervisor.¹²

In addition, appellant did not submit to the Office a corroborating witness statement in response to the Office's request. While she alleged that her screams of pain emitted during the occurrence of her February 12, 2007 injury were overheard by a coworker, Ms. Wilson, to whom she described her injury, Ms. Wilson did not submit a witness statement. This casts additional doubt on appellant's assertion that she strained her right shoulder while trying to turn a cart and prevent it from tipping on February 12, 2007. The Office requested that appellant submit additional factual and medical evidence explaining how she injured her right shoulder on the date in question. Appellant failed to submit such evidence. Therefore, given the inconsistencies in the evidence regarding how appellant sustained her injury, the Board finds that there is insufficient evidence to establish that she sustained an injury in the performance of duty as alleged.¹³

CONCLUSION

The Board finds that the Office properly found that appellant failed to meet her burden of proof to establish that she sustained a right shoulder injury in the performance of duty.

¹² Ms. Sachen asserted in her October 30, 2007 statement that Ms. Forbes, appellant's supervisor, did not receive an accident report from appellant until March 2, 2007. She related that Ms. Forbes told her that appellant never mentioned to her that her injury had occurred on the job. While Ms. Forbes remembered having a conversation with appellant pertaining to her having arthritis or bursitis in her shoulder and experiencing a growing number of aches and pains with age, Ms. Forbes was under the impression that appellant's shoulder problems were related to a chronic condition, not an employment-related injury.

¹³ See *Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 19, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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