United States Department of Labor
Employees' Compensation Appeals Board

F.D., Appellant	)	
and	)	
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL & REGIONAL OFFICE CENTER, Fargo, NC, Employer	)	**Docket No. 08-294** **Issued: May 1, 2008**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 11, 2007 appellant filed a timely appeal from the October 11, 2007 decision of an Office of Workers' Compensation Programs' hearing representative affirming the denial of his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established that he was injured in the performance of duty on April 2, 2007, as alleged.

FACTUAL HISTORY

On April 30, 2007 appellant, then an 84-year-old housekeeping aid, filed a traumatic injury claim, Form CA-1, alleging that he pulled a groin muscle while lifting a box off the floor to take to the trash at 4:30 p.m. on April 2, 2007. The employing establishment controverted the

claim, noting that appellant reported the incident three weeks late, was initially uncertain about the circumstances surrounding the alleged injury, and did not seek immediate medical care.

On May 2, 2007 the Office notified appellant that he had not submitted evidence sufficient to establish his claim. It requested that he provide factual information addressing the alleged employment incident and medical information, including a diagnosis and physician's opinion on the cause of the condition.

On May 8, 2007 appellant's supervisor stated that appellant never reported the injury. Attached to the supervisor's report was a note from Nurse Katherine Zimney, an occupational health coordinator. She stated that appellant came to the employee health clinic on April 23, 2007 after being off of work for 10 days. Appellant could not remember exactly when or how the injury occurred, but indicated that he felt an immediate pain in the left groin after lifting something into a hopper. He estimated that he injured himself at 4:30 p.m. on April 2 or 3, 2007. Appellant did not report the injury to his supervisor because he thought it would get better on its own. He informed his physician of the problem on April 13, 2007, when he went for a previously scheduled appointment for an unrelated right leg issue. Appellant's physician removed him from work, but did not provide a signed form for his absence from work.

On April 13, 2007 Dr. Fred Green, a staff physician at the employing establishment, reported that appellant strained a groin muscle while lifting. He took an x-ray of appellant's left hip and found degenerative joint changes, but no fracture. Dr. Green removed him from work for one week for the unrelated right leg condition of cellulitis. On April 20, 2007 he stated that appellant's muscular strain was getting better, but had not healed sufficiently to allow appellant to return to work. Dr. Green kept appellant out of work for another week. On April 27, 2007 he stated that appellant was being treated for a pulled groin muscle secondary to a work injury. Dr. Green noted that the strain was healing properly, though appellant still hesitated when rising from a seated position. He palpitated the area and found discomfort in the rectus femoris and adductor musculature. On May 3, 2007 appellant still had a tender abductor tendon, but his condition had generally improved. Dr. Green opined that appellant had not healed sufficiently to allow him to return to work as his duties required him to be on his feet for eight hours at a time. He diagnosed adductor muscular strain of the left lower extremity adjacent to the groin.

By decision dated June 7, 2007, the Office denied appellant's claim on the grounds that he had not established that he was injured in the performance of duty. It noted that appellant did not provide the requested factual information about the circumstances surrounding the alleged employment incident and that the employing establishment was uncertain as to whether the incident occurred as alleged.

On June 15, 2007 appellant requested a review of the written record. On August 15, 2007 he stated that he worked in the E.M.M.S. and R.O. offices.[1] Appellant indicated that his groin pain had diminished, but still bothered him to a large extent.

By decision dated October 11, 2007, the Office hearing representative affirmed the June 7, 2007 decision. She found that appellant did not establish fact of injury because he did

[1] Appellant provided neither the location nor the full titles of these divisions.

not report the injury or seek medical care immediately, could not initially identify the specific date and time the event occurred and did not respond to the Office's request for clarification.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[2] 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 filed within the applicable time limitation, that an injury was sustained while in the performance of duty, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[3]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether "fact of injury" has been established. "Fact of injury" consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component of "fact of injury" is whether the incident caused a personal injury, and, generally, this can be established only by medical evidence.[4]

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. A consistent history of the injury as reported on medical reports to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident. 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 she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantive evidence.[5] 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.[6] 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.[7]

---

[2] 5 U.S.C. §§ 8101-8193.

[3] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[4] *Ellen L. Noble*, 55 ECAB 530 (2004).

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

[6] *Louise F. Garnett*, 47 ECAB 639, 643-44 (1996).

[7] *Constance G. Patterson*, 41 ECAB 206 (1989).

ANALYSIS

The Office found that appellant did not establish that he experienced the claimed employment incident. The issue to be resolved is whether appellant has established the April 2, 2007 incident occurred as alleged.

On April 23, 2007 appellant notified Ms. Zimney, an occupational coordinator at the employee health clinic, that he had sustained an employment injury. He could not remember precisely, when but estimated that he injured himself at 4:30 p.m. on April 2 or 3, 2007 while lifting something into a hopper. Appellant stated that he felt an immediate pain in his left groin, but did not report the injury to his supervisor because he thought it would get better on its own. He did not seek medical attention for his condition until April 13, 2007, when he had a previously scheduled appointment for a right leg condition. On appellant's claim form, filed on April 30, 2007, he alleged that he pulled a groin muscle while lifting a box off the floor to take to the trash on April 2, 2007. He did not respond to any of the supplemental questions requested by the Office.

Appellant provided two descriptions of the alleged employment incident after he went to the employee health clinic on April 23, 2007. However, they appear inconsistent with his course of action prior to that time. The Board notes that the record contains no indication that appellant stopped working or began working a light-duty position for the two weeks prior to April 13, 2007, when he was removed from work for an unrelated right leg condition. Dr. Green's April 13 and 20, 2007 reports are the first references to a groin strain in the record. However, he did not obtain any history of an April 2 or 3, 2007 employment incident as described by appellant. Dr. Green noted only that appellant "was doing some lifting and strained a groin muscle." He did not identify an injury of April 2 or 3, 2007 until April 23, 2007. The Board notes that appellant delayed reporting the injury. Dr. Green diagnosed a groin strain on April 13, 2007 but appellant did not notify the employing establishment of an alleged employment injury on April 2, 2007 until 10 days later. Therefore, the Board finds that there are such inconsistencies of record that appellant has not established the employment incident, as alleged.

CONCLUSION

The Board finds that appellant has not established that he was injured in the performance of duty on April 2, 2007, as alleged.[8]

[8] In view of the Board's disposition of the case, there is no need to weigh the medical evidence.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation dated October 11 and June 7, 2007 are affirmed.

Issued: May 1, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

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