

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ALBERT COSTANZO and DEPARTMENT OF DEFENSE,
DEFENSE SUPPLY SERVICES, Washington, D.C.

*Docket No. 96-1277; Submitted on the Record;
Issued August 17, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a low back injury on March 23, 1993 as alleged.

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. 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 burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the 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.²

To accept fact of injury in a traumatic injury case, the Office of Workers' Compensation Programs in addition to finding that the employment incident occurred in the performance of duty as alleged, must also find that the employment incident resulted in an "injury." The term "injury" as defined by the Federal Employees' Compensation Act as commonly used, refers to some physical or mental condition caused either by trauma or by continued or repeated exposure to, or contact with, certain factors, elements or conditions.³ The question of whether an

¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

² *Dorothy Kelsey*, 32 ECAB 998 (1981).

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

employment incident caused a personal injury generally can be established only by medical evidence.⁴

The Board finds that appellant has established that he sustained a low back injury on March 23, 1993 as alleged.

Although appellant did not file a claim form with the Office until July 26, 1994, he reported the March 23, 1993 injury to his supervisor no later than March 26, 1993. On that date his supervisor completed an Office Form CA-16 authorizing medical treatment for lower back pain; the date of injury was listed as March 23, 1993. On March 30, 1993 appellant was examined by Dr. John P. McConnell, a Board-certified orthopedic surgeon, who, on the Form CA-16, listed a history of low back pain after lifting, diagnosed a lumbosacral sprain and indicated this condition was related to the employment activity described. Dr. McConnell indicated that appellant was disabled from March 23 to 30, 1993 and that he could return to his regular work on March 31, 1993.

Appellant reported the injury within three days and obtained medical care within one week of the March 23, 1993 incident. Although the claim was not filed until July 26, 1994, there is nothing which casts serious doubt on the occurrence of the March 23, 1993 incident as alleged by appellant. Coupled with Dr. McConnell's diagnosis of a lumbosacral strain causally related to the March 23, 1993 incident, of which the physician had an accurate history, this information is sufficient to establish that appellant sustained an employment injury on March 23, 1993 as alleged. The Office should pay compensation for appellant's disability from March 23 to 30, 1993 and pay for Dr. McConnell's examination and treatment of appellant on March 30, 1993.

The decision of the Office of Workers' Compensation Programs dated February 26, 1996 is reversed and the case remanded to the Office for further action consistent with this decision of the Board.

Dated, Washington, D.C.
August 17, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁴ *John J. Carlone*, 41 ECAB 354 (1989).