

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN R. MILES and DEPARTMENT OF THE INTERIOR, NATIONAL
PARK SERVICE, MARTIN VAN BUREN NATIONAL HISTORIC SITE,
Kinderhook, NY

*Docket No. 98-1570; Submitted on the Record;
Issued December 20, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether appellant sustained an injury in the performance of duty on June 17, 1996 as alleged.

On August 9, 1996 appellant, then a 44-year-old maintenance mechanic, filed a claim for an injury to his low back, hip and groin sustained by cutting up a fallen tree on June 18, 1996 and by moving heavy furniture and a counter the following day. The employing establishment controverted appellant's claim on the basis that he was on approved annual leave on June 18, 1996 and was not at work. In a statement dated August 15, 1996, the employing establishment's superintendent noted that on July 14, 1996 appellant filed a claim for a recurrence of disability due to a February 1996 back injury at work and that appellant "stated to his supervisor and to myself that this pain in June [1996] was from the previous injury in February [1996]." A form authorizing examination and/or treatment and a duty status report form contain a history of an injury sustained on June 18, 1996 while cutting up a fallen tree; these forms were completed by Dr. Susan M. Skarp, a Board-certified family practitioner on August 14, 1996. On the one form Dr. Skarp checked "unknown" to the question whether the condition found was caused or aggravated by the employment activities described.

By letter dated September 6, 1996, the Office of Workers' Compensation Programs advised appellant that it needed further information on his claim and that the employing establishment had controverted his claim on the basis that he was on annual leave on June 18, 1996. In a reply dated September 15, 1996, appellant stated that on May 24, 1996 he experienced severe pain in his back while using a chain saw and that on June 17, 1996 he experienced pain in his low back, right hip and groin, as well as trouble urinating after taking down a tent and moving a bar counter.

By decision dated October 10, 1996, the Office found that fact of injury was not established. Appellant, through his attorney, requested reconsideration, contending that

appellant hurt his back on June 17, 1996 by cutting wood. By decision dated January 9, 1998, the Office found that the arguments raised in the request for reconsideration were not sufficient to warrant modification of its prior decision.

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

The Board finds that appellant has not established that he sustained an injury in the performance of duty on June 17, 1996 as alleged.

On his claim form appellant contended that he injured his low back and groin by cutting up a fallen tree on June 18, 1996 and by moving heavy furniture and a counter on June 19, 1996. When the Office pointed out to appellant that he was on annual leave on June 18, 1996, appellant submitted a statement indicating he hurt his back by cutting wood on May 24, 1996 and hurt and low back, right hip and groin by taking down a tent and moving a counter on June 17, 1996. Appellant changed not only the date of the injury from June 18 to 17, but also the cause from cutting wood to moving a counter. In a request for reconsideration, appellant's attorney posited yet another scenario: appellant hurt his back on June 17, 1996 while cutting wood. These inconsistencies, coupled with appellant's belated reporting of a June 17, 1996 injury,² cast serious doubt upon the occurrence of an employment injury on June 17, 1996 as alleged.

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

² The case record does not contain appellant's claim for a recurrence of disability due to his February 1996 injury, but the employing establishment's superintendent stated that this form was filed on July 14, 1996.

The decision of the Office of Workers' Compensation Programs dated January 9, 1998 is affirmed.

Dated, Washington, D.C.
December 20, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member