

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROMUELA B. DELA CRUZ and DEPARTMENT OF VETERANS AFFAIRS,
SAN FRANCISCO VETERANS HOSPITAL, San Francisco, Calif.

*Docket No. 97-932; Submitted on the Record;
Issued January 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

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

The Board has duly reviewed the case record and finds that appellant did not sustain an injury in the performance of duty, as alleged.

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 the employment incident at the time, place and in the manner alleged.¹ 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.²

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on a claimant's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.³ However, an employee's statement 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.⁴

¹ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

² *Id.*

³ *Linda S. Christian*, 46 ECAB 598, 600-01 (1995); *Carmen Dickerson*, 36 ECAB 409, 415 (1985).

⁴ *Linda S. Christian*, *supra* note 3 at 601; *Virgil F. Clark*, 40 ECAB 575, 584-86 (1989).

On September 5, 1995 appellant, then a 33-year-old registered nurse, filed an occupational claim, Form CA-2, alleging that she felt sharp pain in her right wrist, right shoulder and lower back resulting from her daily patient care involving lifting, turning and repositioning patients and from the daily use of muscle that was already strained. Appellant stated that she became aware of her injury on July 1, 1995 and became aware that it was work related on August 21, 1995.

By letter dated October 5, 1995, the Office of Workers' Compensation Programs informed appellant that more information was required to establish her claim. By letter dated October 12, 1995, appellant explained that her activities outside of her federal employment involved household duties such as cooking, washing clothes and dishes, vacuuming and taking care of her three children. She stated that by "already strained" muscles she meant her muscles were strained from constantly pushing, pulling, tagging and turning heavy "total care" patients.

By decision dated March 14, 1996, the Office denied the claim, stating that the evidence failed to establish that an injury occurred to her right wrist, as alleged.

On September 6, 1996 appellant filed a claim for a recurrence of disability, Form CA-2a, occurring on August 15, 1996 causally related to the July 1995 employment injury. Appellant stated that the right side of her body was in pain from pushing the medicine cabinet and that she felt spasms in the mid-right back.

By letter dated October 9, 1996, the Office informed appellant that it could not process a claim for a recurrence of disability on a denied case.

By letter dated November 4, 1996, appellant requested reconsideration of the Office's decision and submitted evidence to support her request.

In an attending physician's report, Form CA-20, dated September 9, 1996, Dr. John T. Dekutoski, a Board-certified family practitioner, stated that appellant reported injuring her back a year ago while lifting a patient and has had back pain since that incident. He diagnosed thoracic and lumbar back strain and checked the "yes" box to question No. 8 asking if the condition was caused or aggravated by employment activity. In another attending physician's report with the date October 21, 1996 typed at the top of the page, Dr. Dekutoski stated that appellant felt a sharp pain in her right wrist while turning a patient in bed on July 1, 1995. He diagnosed right wrist sprain and secondary tendinitis and checked the "yes" box that it was related to appellant's employment. In a first report of occupational injury form for the state of California dated August 21, 1996, Dr. Susan Lambert, a specialist in occupational medicine, stated that appellant injured her back at work from 1995 and on August 15, 1996 the back problem started again. She diagnosed back strain. On August 20, 1996, in a questionnaire from Kaiser Permanente, appellant stated that she injured her back at work in July 1995 and her back problem started again on August 15, 1996. In an attending physician's report dated September 18, 1996, Dr. Josh Lipschitz, an internist, stated that appellant injured her back lifting a patient a year ago. He diagnosed upper and lower back pain, checked the "yes" box indicating the condition was work related and stated "lifting patients."

By letters dated November 22 and December 8, 1996, appellant explained that she had two injuries, the first one was on August 21, 1995 and the second one August 18, 1996. Appellant stated that the first injury resulted from constant strain on her right shoulder and back muscles from lifting heavy patients. She stated that the second injury occurred when she was giving medication to a patient and suddenly felt a sharp pain in her lower back which radiated throughout the entire right side of her body including her limbs and foot.

In an undated report, Dr. Dekutoski said appellant sustained an on-the-job injury on August 21, 1995 while caring for a patient at the employing establishment. He diagnosed thoracic lumbar strain. Dr. Dekutoski stated that appellant had no prior history of back injury. He stated that appellant reinjured herself in August 1996 but had since returned to full-time employment.

By decision dated January 8, 1997, the Office denied appellant's reconsideration request.

In the present case, appellant has failed to establish the fact of injury because her accounts of her alleged employment injuries are inconsistent. In her claim dated September 5, 1995, appellant alleges that she injured her back and wrist from lifting, turning and repositioning patients. In her claim for a recurrence of disability dated September 6, 1996, appellant stated that on August 15, 1996 she felt pain in the right side of her body and spasms in her back from pushing the medicine cabinet. In her letters dated November 22 and December 8, 1996, she stated that she injured her back and shoulder on August 21, 1995 and injured her lower back on August 18, 1996 which caused pain to radiate throughout the right side of her body including her limbs and foot. She, however, does not mention a specific incident of hurting her wrist.

Similarly, the doctor's reports are inconsistent with each other and with appellant's reports of the employment injuries. In his September 9, 1996 report, Dr. Dekutoski stated that appellant injured her back a year ago while lifting a patient. In his October 21, 1996 report, Dr. Dekutoski stated that appellant injured her right wrist on July 1, 1995 while turning a patient in bed. In his undated report, Dr. Dekutoski stated that appellant injured her back on August 21, 1995 while caring for a patient and reinjured herself in August 1996. His account that appellant injured her back from a single incident, lifting a patient on July 1, 1995 and injured her right wrist while turning a patient in bed on July 1, 1995 is inconsistent with appellant's account that the first injury in August 1996 resulted from accumulated strain and that she injured the right side of her body on August 15, 1996 when she pushed a medicine cabinet. In her August 21, 1996 report, Dr. Lambert does not describe how appellant's back injury occurred. In his September 18, 1996 report, Dr. Lipschitz stated that appellant injured her back lifting a patient a year ago which conflicts with appellant's account that she injured her back at that time from accumulated strain. Further, the medical evidence reveals that appellant did not report her July or August 1995 back or wrist injury until September 1996 which detracts from her credibility. Appellant has therefore not established that she sustained an injury in the performance of duty, as alleged.

The decisions of the Office of Workers' Compensation Programs dated January 8, 1997 and March 14, 1996 are hereby affirmed.

Dated, Washington, D.C.

January 4, 1999

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member