

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNNY L. LONG and DEPARTMENT OF THE NAVY,
MARINE CORPS LOGISTICS BASE, Albany, Ga.

*Docket No. 97-2697; Oral Argument Held November 12, 1998;
Issued January 27, 1999*

Appearances: *L. Earl Jones, Esq.*, for appellant; *Sheldon G. Turley, Esq.*,
for the Director, Office of Workers' Compensation Programs.

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant met his burden of proof to establish that he sustained an injury in the performance of duty on June 8, 1995.

On July 17, 1995 appellant, then a 41-year-old electromotor mechanic, filed a traumatic injury claim alleging that on June 8, 1995 he sustained a hernia when he lifted the seat from a forklift in the course of his employment duties. Appellant stopped work on June 8, 1995, after reporting to his supervisor that he had developed severe pain in his abdomen and returned to work on July 17, 1995, following surgical repair of his hernia.

In support of his claim, appellant submitted treatment notes dated June 8 and 12, 1995 from a physician's assistant at Tower Medical Group. The June 8, 1995 note documents that appellant presented on June 8, 1995 complaining of pain in his right testicle and groin area, which occurred while lifting approximately 20 pounds. The more complete June 12, 1995 note states in part:

“[Appellant] was seen in our office today as a walk-in with complaints of right groin discomfort. His onset of symptoms began last Tuesday, and he has had intermittent right groin pain with radiation into his right testicle. [Appellant] states that last week he may have strained himself and also relates one event approximately three weeks ago, but is uncertain whether the onset of the symptoms occurred after these events.”

Appellant additionally submitted treatment notes dated June 26 through August 16, 1995 from Dr. A. Douglas Calhoun, which follow appellant's course of treatment from the diagnosis of his condition as a right inguinal hernia through his recovery and release to light-duty work.

In written statements dated August 29 and October 10, 1995, appellant related the course of events between the June 8, 1995 lifting incident and the subsequent diagnosis, on June 14, 1995, of his inguinal hernia.

By decision dated November 7, 1995, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that while the evidence was sufficient to establish that the lifting incident occurred at the time, place and in the manner alleged, the medical evidence was insufficient to establish that the June 8, 1995 incident caused appellant's right inguinal hernia.

By letter dated December 13, 1995, appellant requested reconsideration of the Office's November 7, 1995 decision denying his claim. In support of his request, appellant submitted a medical report dated December 12, 1995 from his treating physician, Dr. Sidney R. Steinberg, a Board-certified surgeon, who stated that appellant had been injured at work on June 8, 1995 and that as a result of this injury and complications therefrom, he underwent surgery on June 26 and October 23, 1995. Dr. Steinberg concluded, "All of these episodes and his current disability are the result of his work-related injury."

By decision dated January 24, 1996, the Office denied modification of its November 7, 1995 decision on the grounds that the medical evidence of record was insufficient to establish a causal relationship between appellant's diagnosed condition and the June 8, 1995 employment incident.

By letter dated January 31, 1996, appellant requested reconsideration of his claim and submitted a January 30, 1996 report from Dr. Steinberg in support of his request. In his report Dr. Steinberg noted the heavy lifting requirements of appellant's employment and stated:

"At the time of his alleged injury on the morning of June 8, 1995, there was no previous history of abdominal pain, hernia, or other abdominal abnormalities. That morning, along with a fellow worker, he lifted a heavy object from the seat of a forklift and experienced a sudden onset of severe pain in the lower abdomen radiating into the right testicle. This pain is rather typical of the development of an inguinal hernia as evidenced by the tearing of muscular tissue in the lower abdomen. It is a result usually of heavy lifting or straining in excess of the body's normal ability to withstand such muscle disruption. He was seen in the office of a local physician and referred to a surgical office for further care, uncertain about what had happened to him, but with a full realization that something had happened that morning of work which led to an injury. After he was seen in the surgical office he was told he had an inguinal hernia and this hernia was then scheduled for surgical repair. With no previous history of hernia, with the time sequence of the heavy lifting developing of severe pain in the testicular radiation, the likelihood is near certain that the development of this hernia was directly related to this lifting and straining on the job on the morning of June 8, 1995.

By decision dated February 27, 1996, the Office denied modification of its November 7, 1995 decision. The Office found that as Dr. Steinberg did not seem aware of appellant's

June 12, 1995 statement that he may have strained himself prior to June 8, 1995, his report was based on an inaccurate factual history as was, therefore, of reduced probative value.

On March 26, 1996 appellant requested reconsideration of his claim and submitted a March 22, 1996 note from Dr. Steinberg, in which the physician reiterated his conclusion that appellant's hernia was employment related and explained that while the June 12, 1995 notation by the physician's assistant did indicate that appellant may have strained himself prior to the reported injury date, there was no evidence that appellant had a hernia or any other problem prior to June 8, 1995.

By decision dated April 26, 1996, the Office denied modification of its November 7, 1995 decision, on the grounds that as the record contained conflicting accounts of how and when appellant's pain began, the evidence was insufficient to establish that an injury occurred as a result of the June 8, 1995 lifting incident.

By letter dated May 22, 1996, appellant submitted his final request for reconsideration of his claim together with a May 14, 1996 report from Dr. Steinberg, in which the physician reiterated the history of appellant's injury and related the course of appellant's treatment.

By decision dated June 11, 1996 and July 17, 1997, the Office denied modification of its November 7, 1995 decision, on the grounds that the evidence of record is insufficient to establish a cause and effect relationship between the June 8, 1995 lifting incident and the claimed hernia.¹

The Board finds that appellant met his burden of proof to establish that he sustained an injury in the performance of duty on June 8, 1995 and that the case is not in posture with respect to whether any disability or specific condition, for which compensation is claimed is causally related to the employment injury.

An employee seeking benefits under the Federal Employees' Compensation Act² 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 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

¹ On June 26, 1996 following the Office's June 11, 1996 decision, appellant filed an appeal with the Board. By motion dated March 13, 1997, the Director, Office acknowledged that the Office had erroneously adjudicated appellant's claim and requested that the Board set aside the June 11, 1996 decision. By order issued April 29, 1997, Docket No. 96-2070, the Board granted the Director's motion and remanded appellant's claim to the Office. On remand the Office issued a July 17, 1997 decision, in which it found the evidence submitted in support of appellant's request for reconsideration was insufficient to warrant modification of the Office's November 7, 1995 decision.

² 5 U.S.C. §§ 8101-8193.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁴ 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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁵ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁶ 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.⁷ 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.⁸

Appellant's claim is consistent with the facts of the case and his subsequent course of action and there are no discrepancies, inconsistencies or contradictions in the evidence, which create serious doubt that appellant sustained an injury in the performance of duty on June 8, 1995. Appellant repeatedly alleged in the factual statements he provided in support of his claim that he sustained his injury on June 8, 1995, as a result of lifting a seat component off a forklift and that on that same day he reported his pain to his supervisor, left work and sought medical attention. Further, his account is essentially consistent with the history he provided when he obtained medical treatment. Appellant submitted medical reports dated June 8, 1995, from a physician's assistant at Tower Medical Group, which document that appellant was complaining of groin pain, which occurred for the first time after lifting approximately 20 pounds. While follow-up notes from Tower Medical Center dated June 12, 1995, note that appellant reported that he "may" have strained himself prior to June 8, 1995, there is no indication in the record that appellant was in any pain prior to June 8, 1995, or that he sought any medical attention prior to that date. This is corroborated by Dr. Steinberg's statement that despite reports of possible prior strains, the medical record contained no evidence that appellant had a hernia or any other problem prior to June 8, 1995 and with Dr. Steinberg's conclusion that with no previous history of hernia and given the time sequence of the heavy lifting followed by the development severe pain with testicular radiation, the likelihood was "near certain" that the development of this hernia was directly related to this lifting and straining on the job on the morning of June 8, 1995. When considered in conjunction with appellant's other statements of record and the well-reasoned reports of Dr. Steinberg, the inconsistencies regarding when appellant first strained

⁴ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁵ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁶ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁷ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

⁸ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

himself must be deemed minor and are not sufficient to cast serious doubt upon the validity of his claim.

For the above-noted reasons, appellant has established that he sustained an injury in the performance of duty on June 8, 1995 in the form of an inguinal hernia. Consequently, the case should be remanded to the Office for evaluation of whether any disability or specific condition for which compensation is claimed is causally related to the employment injury.

The decision of the Office of Workers' Compensation Programs dated July 17, 1997 is set aside and the case remanded to the Office for further proceedings consistent with this decision of the Board.

Dated, Washington, D.C.
January 27, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member