

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of THOMAS F. BURNETT and DEPARTMENT OF THE INTERIOR, FISH & WILDLIFE SERVICE, HARRISON LAKE NATIONAL FISH HATCHERY, Charles City, VA

*Docket No. 99-1171; Submitted on the Record;
Issued July 10, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on May 13, 1998 as alleged.

On June 24, 1998 appellant filed a claim for a reinjury to his low back sustained on May 13, 1998 at 10:30 a.m. when he tripped over a wooden pallet in front of the steps to the office. By decision dated September 15, 1998, the Office of Workers' Compensation Programs found that the evidence was not sufficient to establish that appellant sustained an injury on April 20, 1998 as alleged. Appellant requested a review of the written record, contending that his employment injury occurred on May 13, 1998, not April 20, 1998 as reported by his supervisor.

By decision dated January 11, 1999, an Office hearing representative found that, even if appellant's statements were accepted as factual, the evidence was insufficient to establish an employment injury on May 13, 1998.

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

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

otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.²

The Board finds that appellant has not established that he sustained an employment injury on May 13, 1998 as alleged.

Appellant did not report his alleged May 13, 1998 injury until June 24, 1998. Although appellant took two hours of annual leave on May 13, 1998, these appear to be the two hours from 8:00 to 10:00 a.m. that he requested on May 10, 1998 in order to find a new place to live. Appellant then worked until May 18, 1998 when he took one and one-half hours of annual leave. Appellant used eight hours of annual leave on May 19, 1998 then worked until May 27, 1998 including three hours of overtime on May 26, 1998. Appellant first obtained medical treatment for his alleged May 13, 1998 employment injury on July 21, 1998. These actions are not consistent with the occurrence of an injury on May 13, 1998, especially one involving a herniated disc, as appellant claimed on his June 24, 1998 claim form.

In addition, the record contains a June 18, 1998 letter from appellant to an employing establishment compensation specialist requesting that his case be reopened in order that he can receive compensation for his prior injury that occurred when he stepped in a hole by a levee. This letter makes no mention of an alleged May 13, 1998 employment injury. In an accident report appellant completed on June 24, 1998, he stated that the May 13, 1998 injury occurred while he was leaving the office after dark. As noted above, on the claim form appellant completed on June 24, 1998, he listed the time of the injury as 10:30 a.m.

The inconsistencies noted above are sufficient to cast serious doubt upon the occurrence of a May 13, 1998 injury as alleged. Casting even more doubt are the statements of a supervisor that appellant reported during the last week of April 1998 that he had injured his back on April 20, 1998 in the exact same manner as the alleged May 13, 1998 injury: tripping over a pallet. This April 20, 1998 date of injury also appears in reports of appellant's attending physicians. The circumstances of this claim cast serious doubt on appellant's statements that an injury occurred as alleged on May 13, 1998, and the Board finds that appellant has not established that such an injury occurred as alleged.

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

The decision of the Office of Workers' Compensation Programs January 11, 1999 is affirmed.

Dated, Washington, D.C.
July 10, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member