

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA P. CUZZI and DEPARTMENT OF VETERANS AFFAIRS,
MEDICAL CENTER, Roxbury, MA

*Docket No. 99-1401; Submitted on the Record;
Issued July 10, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty on August 15, 1996, causally related to factors of her federal employment.

On September 16, 1996 appellant, then a 41-year-old nurse, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay (COP)/compensation, alleging that she sustained a herniated disc at level C6-7 on August 14, 1996 when she was reaching over a small monitor on the wall and felt pain and burning down her right arm.¹ Appellant's supervisor noted that appellant did not work on August 14, 1996. Appellant missed work from September 12 to November 16, 1996.

In a September 17, 1996 statement, appellant's supervisor advised that appellant indicated on September 9, 1996 that she was experiencing soreness of her neck, shoulder and back but did not think her condition was work related. The supervisor noted that on September 13, 1996 appellant called her and stated that she was diagnosed with a herniated cervical disc. The supervisor reported that she advised appellant that she had a low sick leave balance and that appellant indicated that she would request advanced sick leave. The supervisor stated that on September 16, 1996, appellant informed her that she was "filing for COP." The supervisor also noted that appellant then denied indicating that she had told the supervisor that she was not injured at work.

In a letter dated September 23, 1996, appellant indicated that she made an error in documenting the date of her injury on the CA-1 form. Appellant indicated that she inadvertently noted the date of the injury as August 14, when it was actually August 15, 1996.

¹ The CA-1 provides a witness statement from Paula Behrend, a coworker of appellant, which indicates that on August 16, 1996 appellant was rubbing her shoulder and upper arm and complaining of pain down into her fingers which had been ongoing for a couple of days. Appellant did not indicate to Ms. Behrend that this was a work-related injury.

Accompanying her claim appellant submitted a certificate to return to work dated August 19, 1996, prepared by Dr. J. David Hackett, a family practitioner, two attending physician reports dated September 16, 1996, prepared by Dr. G. Girgis, a neurologist, and two disability certificates dated September 9 and 13, 1996 also prepared by Dr. Girgis. The certificate to return to work indicated appellant could return to work on light-duty status on August 23, 1996. The two attending physician reports diagnosed C6 radiculopathy. The reports do not address a particular history of injury. The disability slips indicated a C5-6 herniated disc.

The employing establishment submitted time sheets for the period of August 11 through 17, 1996 and noted that appellant was not on duty on the date of the alleged injury August 14, 1996. In addition, on September 23, 1996 an employing establishment assistant noted speaking with appellant regarding her claim and noted that appellant made inconsistent statements to her regarding the date of the alleged work-related injury.

By letter dated September 25, 1996, the Office of Workers' Compensation Programs requested additional factual and medical information from appellant stating that the initial information submitted was insufficient to establish an injury on the above date. The Office particularly requested that appellant explain the delay in filing the claim.

In response to the Office's request appellant submitted an attending physicians report dated September 17, 1996, prepared by Dr. Hackett; a narrative from appellant dated September 23, 1996 and a letter from Dr. Adrian V. Blake, Board-certified in family practice, dated October 25, 1996. The attending physicians report diagnoses appellant with bicep/deltoid tendonitis. The physician indicated with a checkmark "yes" that appellant's condition was aggravated by an employment activity but noted with a question mark as to whether the condition was caused by the employment activity. Appellant's narrative noted a description of the injury and the conditions surrounding the incident. Appellant also noted that she made an error in documenting the date of her injury on the CA-1 form. Appellant indicated that she inadvertently noted the date of the injury as August 14, 1996 when in fact it was August 15, 1996. The letter from Dr. Blake indicated his belief that there appeared to be fair evidence of cause and effect that this was a work-related injury.

In a decision dated November 4, 1996, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on August 15, 1996 as required by the Federal Employees' Compensation Act.² The Office found that the initial evidence of file was insufficient to establish that appellant actually experienced the accident, event, or employment factor at the time, place and in the manner alleged.

Appellant, through her representative, requested a hearing before an Office hearing representative. The hearing was held on June 19, 1997. At the hearing appellant submitted a magnetic resonance imaging report dated September 10, 1996, a medical report dated October 28, 1996 by Dr. Philip A. Tridanico, a chiropractor; a radiology report dated October 21, 1996, a medical report dated October 25, 1996, by Dr. Blake; a medical report of Dr. Girgis dated November 4, 1996 and an attending physicians report with an attached narrative by Dr. Girgis

² 5 U.S.C. §§ 8101-8193.

dated November 20, 1996. At the hearing, appellant testified that she had no prior cervical spine injury and that she was unaware, until after the fact, that she had to file a claim for continuation of pay within 30 days of the date of injury. She also indicated that she had never filed a previous claim.

By decision dated August 29, 1997, the hearing representative affirmed the Office's November 4, 1996 decision.

By letter dated August 28, 1998, appellant, through her representative, requested reconsideration of the prior decision and submitted additional medical evidence. Appellant's representative raised the following arguments regarding the hearing representative's decision: (1) the decision was based on a misstatement by appellant regarding the actual date of the injury; (2) the decision relied on the employing establishments statement that appellant did not report the work injury; (3) the medical records were not adequately considered; and (4) the Office should have facilitated further development of the record. Appellant also submitted a new medical report from Dr. Girgis dated August 28, 1998, which indicated that appellant had been under the treatment of Dr. Girgis since September 9, 1996 for right arm pain, which was related to working in the intensive care unit.

By decision dated December 9, 1998, the Office denied modification of its prior decision. The Office concluded that appellant did not meet her burden of proof in establishing that her injury occurred at the time, place and in the manner alleged.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty, causally related to factors of her federal employment.

An employee seeking benefits under the Act 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 filed within the applicable time limitation 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 is causally related to the employment injury."³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ In some traumatic injury cases this

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

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Elaine Pendleton*, *supra* note 3.

component can be established by an employee's uncontroverted statement on the Form CA-1.⁶ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.⁷ A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁸ 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.⁹ Although 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,¹⁰ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.¹¹

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹²

In the present case, appellant alleged that she was injured by reaching over a small monitor on the wall on August 15, 1996 while at work. However, appellant did not stop work at the time of the alleged injury until she sought medical treatment four days later. Once she did seek medical treatment, the initial treatment notes make no mention of an employment-related incident. Also, there was no witness to the alleged incident and appellant acknowledged making an error with regard to when the incident occurred after her supervisor pointed out that appellant did not work on the first date appellant provided as the date of injury. A coworker, Ms. Behrend, provided a statement, which indicated she saw appellant on August 16, 1996 and she was rubbing her shoulder and upper arm and complaining of pain down into her fingers. However, when Ms. Behrend questioned appellant about the cause of the pain, appellant did not mention it was a work-related injury. Additionally, appellant did not file a traumatic injury claim for over one month following the alleged incident. Appellant indicated that the delay in filing the claim was due to the fact that she had never filed a claim prior to this time and was unfamiliar with the

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

⁷ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁸ *Id.* at 255-56.

⁹ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

¹⁰ *Id.*

¹¹ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

¹² *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

procedural process. However, the record indicates that a claim was filed on appellant's behalf in October 1989 for a back strain and followed the same procedural process.¹³ These circumstances of late notification, lack of confirmation, inconsistencies in the date of injury, failure to acknowledge familiarity with the claims process cast serious doubt on appellant's *prima facie* claim.

As noted above, the medical evidence submitted by appellant does not support that the incident of August 15, 1996 occurred as alleged. The medical records submitted most contemporaneously with the date of the alleged injury, including a certificate to return to work dated August 19, 1996, prepared by Dr. Hackett, two attending physician reports dated September 16, 1996, prepared by Dr. Girgis, two disability certificates dated September 9 and 13, 1996, also prepared by Dr. Girgis, indicate appellant was being evaluated for C6 radiculopathy but did not mention a work-related incident or injury.

While the Office requested that appellant explain the discrepancies and inconsistencies, the record contains little clarification. For these reasons, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty on August 15, 1996, as alleged.

¹³ The record indicates that appellant's 1989 claim was accepted for a low back strain. The record also indicates that appellant was diagnosed with a muscle strain and sprain of the left side of the neck on October 16, 1989. Appellant received continuation of pay for this injury.

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

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

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member