

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JAMES H. GRIER and DEPARMTENT OF THE TREASURY,
Laguna Niguel, CA

*Docket No. 99-518; Submitted on the Record;
Issued May 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained a tooth injury causally related to his October 19, 1995 employment injury as alleged.

The Board hereby adopts the facts as accurately set forth in the Office of Workers' Compensation Programs' hearing representative's decision dated August 13, 1998.

The Board has duly reviewed the case record in this appeal and finds that appellant has failed to meet his burden of proof to establish that he sustained a tooth injury causally related to his October 19, 1995 employment injury as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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.² 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.³ The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

An employee who claims benefits under the Act⁵ 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.⁶ 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.⁷ An employee has not met his 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.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 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.¹⁰

In this case, appellant filed a traumatic injury claim (Form CA-1) on October 19, 1995, alleging that he sustained an employment-related shoulder injury when he and his partner landed on a mat with his left shoulder bearing the weight during the execution of a defensive tactics movement at the Federal Law Enforcement Training Center in Glynco, Georgia. The Office accepted appellant's claim for an acromioclavicular separated left shoulder. On February 28, 1996 appellant filed a Form CA-1 alleging that he sustained a tooth injury due to his October 19, 1995 employment injury. Appellant reiterated the previous history of the October 19, 1995 employment injury and added that his partner's knee hit his head and chipped his tooth resulting in a root canal and a crown. Appellant submitted a September 23, 1996 narrative statement describing how he was thrown in the air with his partner and then landed on the floor with his partner on top of him. Appellant stated that the initial contact with the floor was with his left shoulder, which caused the shoulder separation. Appellant also stated that his partner landed on top of him with one of his knees providing a severe blow to the lower cheekbone area of the right side of his face, which unbeknownst to him, cracked his tooth. He explained that, while he was taking medication for his shoulder injury, he did not receive any dental treatment because he did not experience any oral pain. Appellant further explained that after he was slowly getting off his medication, he began to experience sensitivity in the tooth, which was later found to be cracked and required a root canal. In response to the Office's January 31, 1997 letter advising him to explain why he did not allege that he sustained a tooth injury on October 19, 1995, appellant stated that he was unaware of the injury at that time. Appellant reiterated the pain he felt in his tooth while getting off his medication. Appellant stated that during a regular routine dental

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *William Sircovitch*, 38 ECAB 756 (1987); *John G. Schaberg*, 30 ECAB 389 (1979).

⁷ *Charles B. Ward*, 38 ECAB 667 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175 (1984).

⁸ *Tia L. Love*, 40 ECAB 586 (1989); *Merton J. Sills*, 39 ECAB 572 (1988).

⁹ *Samuel J. Chiarella*, 38 ECAB 363 (1987); *Henry W.B. Stanford*, 36 ECAB 160 (1984).

¹⁰ *Robert A. Gregory*, 40 ECAB 478 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

examination, his dentist indicated that the tooth had a crack in it and that it had decayed substantially. Appellant then stated that his dentist asked him whether he had received a blow to that area and it was at that time that he knew the origin of the tooth injury because he had no impact to his body other than on October 19, 1995. Appellant stated that he remembered the blow from his partner's knee to his lower right cheekbone area. At the oral hearing, appellant testified:

“Something might have hit my face, but I can't say -- you know, here -- well I think it was the lower, left thigh -- although I stated in one letter that I believe it was a knee type of thing because it happened. He hit me in the face, but it wasn't his fist. It had to be something hard. It wasn't his heel. So, it was most likely his knee.”

A February 28, 1996 medical report of Dr. Robert Levin, appellant's dentist, indicated that appellant believed that he cracked his tooth in training, but at that time the tooth did not bother him. Dr. Levin noted his treatment of appellant's tooth and opined that “this problem with tooth #3 was due to the crack in the marginal ridge causing food to get packed [in] this area and result in decay.” Dr. Levin's November 6, 1997 medical report indicated that he had been treating appellant since 1991 and had seen him approximately every six to eight months. He noted that during this time, he never had to perform any dental treatment other than cleanings. Dr. Levin opined:

“With this in mind I believe that [appellant] would have never had the problem with tooth #3 if it had not been chipped. There is no way for me to make any conclusions on how [appellant] chipped his tooth other than the fact that some sort of trauma caused a fracture of mesial marginal ridge of tooth #3.”

The June 15, 1998 witness statement of Willie Castro, appellant's classmate and coworker, revealed that he witnessed appellant's fall and that he was told by appellant about his immediate shoulder pain. Mr. Castro, however, stated that appellant was his roommate during this time and that appellant did not complain of pain other than in his shoulder or his shin splints for the duration of the training. Additionally, Mr. Castro noted that after training and a return to their duty-post, appellant relayed his story about his cracked tooth, but stated that “I did not see or hear of [appellant] receiving any blows to his head since I have known him (May 1995) other than [appellant] stating to me his belief that the defensive tactics fall caused some part of his partner to make contact with his face, subsequently cracking his tooth.” He then concluded that “[a]lthough I did not see [appellant's] defensive tactics partner specifically make contact with any part of [appellant's] face area during the fall, they were involved in a fall that did injure [appellant's] shoulder and, therefore, could have possibly created other injuries as well.”

The Board finds that appellant has not submitted sufficient factual evidence to establish that his tooth injury occurred as alleged. Although appellant has consistently stated that he did not realize his tooth injury at the time of the October 19, 1995 employment injury, his hearing testimony indicated that he was uncertain as to how this injury occurred on that date. Further, Dr. Levin's February 28, 1996 medical report did not contain a full history of appellant's October 19, 1995 employment injury. Dr. Levin's November 6, 1997 medical report did not provide any medical rationale explaining how appellant's tooth injury was caused by the

October 19, 1995 employment injury. Appellant's own witness, Mr. Castro, indicated that appellant did not complain about his tooth injury immediately following the October 19, 1995 employment injury and that he did not see appellant's partner specifically make contact with any part of appellant's face area during the fall. Further, Mr. Castro's opinion about the cause of appellant's tooth injury was speculative. Inasmuch as there is conflicting evidence regarding whether appellant's tooth injury occurred as alleged, the Office hearing representative properly denied appellant's claim finding that he had not established fact of injury.

The August 13, 1998 decision of the Office of Workers' Compensation Programs' hearing representative is hereby affirmed.

Dated, Washington, D.C.
May 3, 2000

David S. Gerson
Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member