U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LARRY C. WASHINGTON and DEPARTMENT OF VETERANS AFFAIRS, HOUSTON REGIONAL OFFICE, Houston, TX

Docket No. 00-211; Submitted on the Record;
Issued November 7, 2000

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
VALERIE D. EVANS-HARRELL

The issue is whether appellant sustained an injury in the performance of duty, on January 22, 1998 as alleged.

The Board has duly reviewed the case record and finds that appellant has not met his burden of proof to establish that he sustained 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 her 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 burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[3] However,

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[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); *George V. Lambert*, 44 ECAB 870, 875-76 (1993).

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]

On February 4, 1998 appellant, then a 44-year-old program support clerk, filed a claim for a traumatic injury, Form CA-1, alleging that, on January 22, 1998, he sustained an injury to his neck when he fell over boxes lying on the floor by the printers.

He submitted diagnostic tests consisting of a cervical myelogram and a computerized axial tomography (CAT) scan dated December 10, 1997 which showed, in part, multi-level mild to moderate spondylosis. Appellant also submitted a medical report dated December 3, 1997 from Dr. Stuart M. Weil, a Board-certified neurological surgeon, in which he diagnosed cervical radiculopathy and prescribed treatment but did not mention appellant's employment.

By letter dated March 10, 1998, the Office requested additional information from appellant including a physician's report explaining how the reported work incident caused or aggravated the claimed injury.

Appellant submitted a statement describing the injury on January 22, 1998 in greater detail.

By decision dated April 21, 1998, the Office denied the claim, stating that the evidence appellant submitted was not sufficient to establish that he sustained an injury on January 22, 1998, as alleged.

By letter dated November 6, 1998, appellant submitted a "Notice of Disagreement," stating that he did not state that his condition was caused by the accident but that the accident aggravated his condition, and that he had surgery due to the symptoms that developed after the alleged January 22, 1998 employment injury.

In an undated letter received by the Office on January 21, 1999, appellant requested reconsideration of the Office's decision and submitted bills of medical treatment dated from March 9 through October 27, 1998.

By decision dated March 29, 1999, the Office denied appellant's request for modification.

In the present case, appellant did not present any factual or medical evidence to corroborate that he sustained an injury to his neck on January 22, 1998, as alleged. The December 10, 1997 myelogram and CAT scan and Dr. Weil's December 3, 1997 medical report are not probative as they were performed or obtained prior to the date of the alleged January 22, 1998 employment injury. Moreover, Dr. Weil did not mention any employment injury. The bills dated from March 9 through October 27, 1998 showing that appellant received medical treatment are also not probative in establishing that appellant sustained an employment injury on January 22, 1998 as they do not constitute competent medical evidence by a qualified physician.

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

Despite the Office informing appellant of the evidence he must submit to establish his claim, appellant did not submit the requisite evidence. He therefore failed to establish his claim.

The decision of the Office of Workers' Compensation Programs dated March 23, 1999 is hereby affirmed.

Dated, Washington, DC
November 7, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

Valerie D. Evans-Harrell
Alternate Member