

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of VINCENT W. MONDINI and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION PITTSBURGH HEALTHCARE SYSTEM,
Pittsburgh, PA

*Docket No. 99-1413; Submitted on the Record;
Issued October 3, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that he sustained back and neck injuries in the performance of duty on November 3, 1998, causally related to factors of his federal employment.

On December 16, 1998 appellant, then a 47-year-old laundry worker, filed a Form CA-1, notice of traumatic injury and claim for continuation of pay/compensation, alleging that he strained his neck and lower back on November 3, 1998 when he was bending over a large bin. Appellant continued to work but was placed on light duty from November 13 through 16, 1998. Appellant's supervisor stated that appellant gave him a light-duty request from appellant's doctor in November 1998 but that appellant did not indicate that his condition was work related.

Accompanying his claim appellant submitted certificates to return to work, two notes from Dr. Eileen M. Kummant, a family practitioner and employee health records from December 11 to 21, 1998. The certificates to return to work dated November 13 to 16, 1998, prepared by Dr. Kummant, note that appellant was being treated for radiculopathy of the L3-4 and bronchitis. She restricted appellant's lifting and bending and indicated appellant could return to regular duty on November 17, 1998. Dr. Kummant also submitted two notes dated December 18, 1998, which indicated appellant was being evaluated for back pain and neurological symptoms with a note appellant was to continue light duty. The employee health records dated December 11 to 21, 1998 noted appellant had chronic back pain for four weeks with a diagnosis of L4-5 radiculopathy and indicated possible disc involvement. The documents submitted did not indicate that appellant was being treated for a work-related injury.

Also submitted were notes from December 16 to 21, 1998 from an employing establishment personnel assistant who noted speaking with appellant regarding why he did not report his injury sooner and noted that appellant made inconsistent statements to her regarding when he informed Dr. Kummant that his condition was work related.

By letter dated January 8, 1999, 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.

Dr. Kummant subsequently submitted certain records and treatment notes regarding appellant. Included in these was a November 30, 1998 report from her indicating that she was "somewhat concerned that this patient's complaints may be related to possible secondary gain."

In a decision dated February 10, 1999, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on November 3, 1998 as required by the Federal Employees' Compensation Act.¹ The Office found that the initial evidence of file was insufficient to establish that appellant experienced the claimed incident on November 3, 1998. The Office also noted appellant did not provide an explanation for delaying over a month before filing a claim.

The Board finds that appellant has failed to establish that he sustained an injury on November 3, 1998 in the performance of duty, causally related to factors of his 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."² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.³

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.⁴ In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.⁵ An alleged work incident does not have to be confirmed by eyewitnesses in order to establish

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

³ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

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 his subsequent course of action.⁶ 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.⁷ 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.⁸ 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,⁹ 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.¹⁰

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.¹¹

In the present case, appellant alleged he was injured by bending over a large bin on November 3, 1998 while at work. However, appellant did not stop work because of the injury nor did he seek medical treatment for a period of one week. Once he did seek medical treatment, the initial treatment notes make no mention of an employment-related condition. Also, there were no witnesses to the alleged incident. Although appellant presented a light-duty slip from his physician to his supervisor and was thereafter placed on light duty from November 13 to 16, 1998, at no time did appellant notify his supervisor that this was a work-related injury. Additionally, appellant did not file a traumatic injury claim for over one month following the alleged incident. These circumstances of late notification, lack of confirmation and continuing to work without difficulty 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 November 3, 1998 occurred as alleged. The medical records submitted most contemporaneously with the date of the alleged injury, including Dr. Kummant's notes and work certificates dated November 10 through December 18, 1998, and employee health records from December 11 through 21, 1998, indicate appellant was being evaluated for back pain but did not mention a work-related injury. Dr. Kummant first mentioned that the injury was related to

⁶ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁷ *Id.* at 255-56.

⁸ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

⁹ *Robert A. Gregory*, 40 ECAB 478 (1989).

¹⁰ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

¹¹ *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

appellant's federal employment in her letter dated January 5, 1999, nearly two months after the alleged injury. Furthermore, Dr. Kummant merely states that appellant was seen on November 13, 1998 for bronchitis and "back pain and burning in the sole of his left foot; related to bending and twisting in his job at the laundry." On February 2, 1999 she issued another report referencing a work injury. However, in neither report did Dr. Kummant note a date of injury or explain her more contemporaneous assessment as stated in her November 30, 1998 report, in which Dr. Kummant noted being concerned that appellant's complaints were related to secondary gain.

While the Office requested that appellant explain these discrepancies and inconsistencies, the record contains no such clarification.¹² For these reasons, appellant has not met his burden of proof.

The decision of the Office of Workers' Compensation Programs dated February 10, 1999 is affirmed.

Dated, Washington, DC
October 3, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member

¹² Appellant submitted additional evidence and a reconsideration request after issuance of the February 10, 1999 decision. On March 30, 1999 the Office issued a merit reconsideration decision. However, as the Board acquired jurisdiction over the appeal on March 2, 1999, therefore, the March 30, 1999 Office decision is null and void. The Board and the Office may not have concurrent jurisdiction over the same issue in a case; *see Russell E. Lerman*, 43 ECAB 770 (1992) and *Douglas E. Billings*, 41 ECAB 880 (1990). Furthermore, the Board may not consider new evidence on appeal. 20 C.F.R. § 501.2(c).