

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LAWRENCE CLARK and DEPARTMENT OF AGRICULTURE,
ANIMAL & PLANT HEALTH INSPECTION SERVICE, Cocoa, FL

*Docket No. 01-401; Submitted on the Record;
Issued December 3, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty on August 7, 1998.

On September 1, 1998 appellant, then a 67-year-old veterinary medical officer, filed a traumatic injury claim alleging that on August 7, 1998 he was collecting a blood sample from a horse, reached for the horse's neck and turned sharply to his right when he felt a sharp short pain in his right knee. During a telephone interview on September 10, 1998, coworker, Ronald Uherka stated that he did not observe the injury but that on August 17 or 18, 1998 appellant told him of an injury.

On September 17, 1998 the Office of Workers' Compensation Programs received office notes by Dr. Hany Helmy, a Board-certified orthopedic surgeon, covering June 13, 1995 through September 10, 1998 and an authorization for examination and/or treatment (Form CA-16) completed by Dr. Helmy on November 9, 1998.

By letter dated July 14, 1999, the Office requested detailed factual and medical information from appellant.

By decision dated August 18, 1999, after receiving no response from appellant, the Office denied appellant's claim, finding that the evidence of record failed to establish a causal relationship between a claimed condition and the August 7, 1998 incident.

By letter dated March 2, 2000, to support that an incident occurred, appellant, through his attorney, submitted a March 2, 2000 letter from coworker, Mr. Uherka, who stated that: "I recall in August 1998, [appellant] was bleeding a horse in a stall and twisted his knee. Later that year, at the Fall Work Conference in Gainesville, [appellant] had difficulty getting up out of a chair and walking."

On August 25, 1999 the Office received appellant's response to the July 14, 1999 request for additional information. Appellant stated that the immediate affect was sharp pain in the right knee. Then several days later prolonged episodes of pain and pronounced swelling in the knee joint.¹

On September 13, 1999 the Office received Dr. Helmy's office notes covering September 1991 through January 21, 1999.

By letter dated May 20, 2000, appellant, through his attorney, requested reconsideration of the August 18, 1999 decision. Submitted in support was a deposition of Dr. Helmy taken on April 11, 2000 and the doctor's qualification statement.

By decision dated August 24, 2000, the Office modified the August 18, 1999 decision finding that the basis for denial should be that the evidence of record does not establish the fact of an injury occurring on August 7, 1998.

The Board finds that appellant has failed to meet his burden of proof in establishing that he sustained an injury on August 7, 1998.

An employee seeking benefits under the Federal Employees' Compensation Act² 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, and that the claim was filed within the applicable time limitations of the Act.³ An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,⁴ that the injury was sustained while in the performance of duty,⁵ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁶ 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.⁷

In a traumatic injury case, the employee must establish by the weight of reliable, probative and substantial evidence that the occurrence of an injury is in the performance of duty at the time, place and in the manner alleged and that the injury resulted from a specific event or

¹ Appellant claimed that he did not receive the July 14, 1999 letter. It is presumed, absent evidence to the contrary, that a notice mailed to an individual in the ordinary course of business was received by that individual. *A.C. Clyburn*, 47 ECAB 153 (1995).

² 5 U.S.C. §§ 8101-8193.

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

⁴ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *Steven R. Piper*, 39 ECAB 312 (1987).

⁷ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

incident.⁸ The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹

Such circumstances as late notification of injury, lack of confirmation of 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.¹⁰ 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.¹¹

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific incident occurred at the time, place and in the manner alleged. Appellant did not notify his supervisor of an injury until August 18, 1998, 11 days after the alleged incident and did not claim that it was job related until filing a claim on September 9, 1998. Although appellant stated that coworker, Mr. Uherka witnessed the incident, neither during a telephone interview on September 10, 1998 nor in his March 2, 2000 statement did Mr. Uherka state that he was present during the incident. His testimony was that appellant told him of the incident on August 17 or 18, 1998. Also, appellant first obtained medical treatment on August 18, 1998 from Dr. Helmy, but never mentioned an incident on August 7, 1998 that immediately caused sharp pain, and several days later caused prolonged pain and pronounced swelling according to appellant. Yet either the day before or on the same day that he saw the doctor, he told his coworker of the incident. Appellant saw Dr. Helmy again on September 10, 1998 and was specifically asked about whether any specific incident occurred and appellant stated that he could not remember any specific injury. It is difficult to understand how someone goes to his physician with complaints of right knee pain and swelling, but forgets about an incident that happened 11 days prior that caused prolonged pain and pronounced swelling in the right knee. Consequently, the Board finds that there are such inconsistencies in the evidence as to cast serious doubt on the validity of appellant's claim.

In addition, none of the medical evidence submitted provided a rationalized medical opinion causally relating appellant's right knee condition to the alleged August 7, 1998 incident. In his office note of August 18, 1998 Dr. Helmy, a Board-certified orthopedic surgeon stated that he first saw appellant that day, for pain and tenderness over the lateral joint line and also over the tibiofemoral joint, but there is no mention of the alleged incident of August 7, 1998. In an office note of September 10, 1998 its clear the doctor specifically asked if any particular incident had occurred and appellant responded that he did not remember any one incident. In his April 11, 2000 deposition, Dr. Helmy was asked to assume the August 7, 1998 incident occurred and to give an opinion as to whether or not the incident caused appellant's chondromalacia of the patella or aggravated a preexisting condition. He responded: "It probably aggravated the

⁸ See *Joshua Fink*, 35 ECAB 822, 823-24 (1984).

⁹ *Eric J. Koke*, 43 ECAB 638 (1992); *Mary Joan Cappolino*, 43 ECAB 988 (1992).

¹⁰ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

¹¹ *Robert A. Gregory*, *supra* note 4; *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

condition.” However, Dr. Helmy’s opinion was based on an assumption that the incident occurred and even then he could not clearly state what, if any, affect it had on appellant’s condition.

The Office advised appellant of the type of evidence needed to establish his claim, but such evidence has not been submitted. Therefore, the Board finds that the evidence of record is insufficient to meet appellant’s burden of proof.

In view of the inconsistencies in appellant’s conduct, *i.e.*, delay in reporting a work-related incident to his supervisor, failure to mention an incident to his physician and claiming that a witness observed the incident, regarding his injury and the lack of medical evidence which causally related a diagnosed condition to the alleged incident of August 7, 1998, the Board finds that there is insufficient evidence to establish that appellant sustained an injury to his right knee in the performance of duty on August 7, 1998.

The decision of the Office of Workers’ Compensation Programs dated August 24, 2000 is affirmed.

Dated, Washington, DC
December 3, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member