

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DEBBIE T. CAMPBELL and DEPARTMENT OF THE ARMY,
ARMY PROVING GROUND, Yuma, AZ

*Docket No. 00-2552; Submitted on the Record;
Issued July 9, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant sustained an insect bite in the performance of duty on October 1, 1998.

On October 1, 1998 appellant, then a 26-year-old lead education technician, filed a claim for a bite on the left hand sustained that morning at 6:30 a.m. She stated that she was unsure what bit her hand, but that it felt numb and was throbbing. On the reverse side of appellant's claim form her supervisor answered "yes" to the questions of whether appellant was injured in the performance of duty and whether its knowledge of the facts about this injury agreed with appellant's statements. The employing establishment completed an accident analysis report indicating appellant was injured in a hazardous location, in that the "[o]utside area is often 'visited' by spiders and ants."

Appellant was seen at the employing establishment's occupational health clinic on October 1, 1998 and provided a history that she was working outside in the child care center and that she "did not feel any insect or spider crawl up on her left hand, only saw raised swollen area this morning 0700" and that she was "unsure of [left] hand swelling other than believed to be a spider bite as mosquitoes do not react same way and had a spider bite last year October 2, 1997." Dr. Shawn A. MacLeod's examination of appellant's left hand revealed erythema and swelling on the dorsum and a central firm area "at site of bite." Dr. MacLeod diagnosed "local allergic response to insect bite."

By letter dated December 9, 1998, the Office of Workers' Compensation Programs advised appellant that it needed a detailed narrative medical report including an opinion on the relationship of the diagnosed condition to her federal employment activity. Appellant submitted additional medical evidence, including notes of four examinations by Dr. Lillian Muzyka from October 26 to November 25, 1998, a November 25, 1998 report from Dr. Jon Karroll and December 7, 1998 office notes and a January 10, 1999 narrative report from Dr. Louis M. Miller, a hand surgeon. Dr. Karroll, who examined appellant at a hospital emergency department on November 25, 1998 for a swollen painful left hand, set forth a history that on October 1, 1998

appellant was told at the employing establishment's medical clinic that a spider had bitten her on the left hand but that she "did not ever see a spider bite her and was unaware of anything biting her. She said that since the incident in October, she has had persistent pain and swelling in the left hand." Dr. Karroll stated: "The history is inconsistent with the physical examination. Physical examination really looks like the type of injury I have seen with blunt trauma; such as striking the hand against a hard object." In his January 10, 1999 report, Dr. Miller stated that the history given on December 7, 1998 was that she got bitten by a spider and that examination on January 4, 1999 revealed a possible diagnosis of reflex sympathetic dystrophy. Dr. Miller stated that this was a very serious problem and that he was "not sure why it developed in this individual."

By decision dated February 18, 1999, the Office found: "The Office accept[ed] that you were injured in the performance of duty in an area known to have spiders, ants and other insects. In addition to establishing that the injury occurred in the performance of duty, claimants must also establish a causal relation between the diagnosed medical condition and their federal employment activity." The Office found that the medical evidence failed to establish such causal relationship.

By letter dated March 24, 1999, appellant requested reconsideration and submitted additional medical evidence. In a report dated March 9, 1999, Dr. Justin D. Robey, the employing establishment's director of health services, concluded that appellant's "federal work activity is causally related to her injury and subsequent medical condition. The insect bite occurred while working outdoors at her place of employment." In reports dated March 22, 1999, Dr. Stephen A. Wallace stated: "[A]ppellant had all the classic signs of reflex sympathetic dystrophy [RSD]: Swelling, decreased range of motion, muscle tremors and dysesthetic pain. Dr. Wallace stated that it was well known that, minor trauma, such as being stung by a bee or stuck by a rose thorn, could set off reflex sympathetic dystrophy and concluded: "So I have no doubt after looking at this patient's arm that her RSD was set off by an insect bite that occurred at work."

By decision dated May 27, 1999, the Office modified its February 18, 1999 decision, finding that the evidence did not support that the claimed injury occurred at the time, place and in the manner alleged and denying appellant's claim for failure to establish fact of injury, rather than causal relationship.

By June 11, 1999 letter from her congressional representative, appellant requested reconsideration and submitted a June 7, 1999 report from Dr. Wallace. Discussing Dr. Karroll's November 25, 1998 emergency department report, Dr. Wallace stated:

"When RSD first presents it can appear to be blunt trauma. The difference is as time passes if blunt trauma was the cause of the changes found on physical exam[ination] the changes will resolve. If RSD produced by a spider or insect bite caused the findings, they will not disappear, they will get worse. This is what happened to [appellant].

"The quotes from Dr. Karroll's cursory emergency room exam[ination] came from an exam[ination] that was early in the course of the RSD. His statements

came when the RSD was first appearing. You did not give Dr. Karroll the opportunity to see how the limb has now become a source of severe pain is now functionally of no use.”

By decision dated September 24, 1999, the Office found that the additional evidence was immaterial and not sufficient to warrant review of its prior decision.

By letter dated March 13, 2000, appellant, through her attorney, requested reconsideration.

By decision dated June 21, 2000, the Office found, “The facts of the situation are so inconsistent as to raise doubt regarding whether an injury occurred [at] the time, place and [in the] manner alleged.”

The Board finds that appellant sustained an injury in the performance of duty on October 1, 1998 as alleged.

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An employee’s statement that an incident 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.¹ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the 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 subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.² Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and the 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.³

There are no inconsistencies in the evidence that cast serious doubt on the validity of appellant’s claim. She filed a claim on the date of the occurrence of her injury and also was seen on that date at the employing establishment’s occupational health clinic, where “local allergic response to insect bite” was diagnosed. The employing establishment’s examining physician believed appellant was bitten by an insect on the morning of October 1, 1998 and the employing establishment’s director of health services, upon reviewing the evidence, stated: “The insect bite occurred while working outdoors at her place of employment.” [Appellant’s supervisor indicated on appellant’s claim form that appellant was injured in the performance of duty and that her knowledge of the facts about this injury agreed with appellant’s statements.] When there are positive assertions believed by officials of the employing establishment, that an event has

¹ *Thelma S. Buffington*, 34 ECAB 104 (1982).

² *Joseph A. Fournier*, 35 ECAB 1175 (1984).

³ *Dorothy Kelsey*, 32 ECAB 998 (1981).

taken place, they are to be accepted as accurate unless contravened by other evidence of equal weight or unless the assertions are self-contradictory or palpably unbelievable.⁴

The only evidence that tends to refute that appellant was bitten by a spider or insect on October 1, 1998 as alleged is the report of her hospital emergency department visit on November 25, 1998. Dr. Karroll stated that his examination of appellant's hand that day "looks like the type of injury I have seen with blunt trauma; such as striking the hand against a hard object." Appellant's attending physician, Dr. Wallace, addressed this opinion, stating that when reflex sympathetic dystrophy first appears it can appear to be blunt trauma, but that blunt trauma gets better over time, whereas appellant's condition continued to worsen. In light of Dr. Wallace's statement, Dr. Karroll's opinion does not refute appellant's claim.

The primary difficulty with appellant's claim was that she did not actually see a spider or insect bite her. However, in two other cases involving insect bites, the employees did not actually see any insect and the Board nonetheless found that they had established that they sustained an insect bite in the performance of duty as alleged.⁵ As in those cases, that the identity of the offending creature proved elusive is not fatal to appellant's claim. The harm appellant experienced was associated with her employment, in that the area in which she performed her duties was known to be frequented by spiders and insects. While working in this area, appellant felt numbness and throbbing in her hand and surmised she had received a spider bite on the basis of the spider bite she received one year earlier. Appellant's assertion is not palpably unbelievable, but rather is sufficient, particularly in light of a diagnosis made the same day of allergic reaction to insect bite, to support a rational, sound and logical conclusion that appellant was bitten by an insect or spider on October 1, 1998 as alleged.⁶

⁴ *Virgil F. Clark*, 40 ECAB 575 (1989); *Elizabeth A. Keller*, 34 ECAB 1566 (1983).

⁵ *Doyle W. Ricketts*, 48 ECAB 167 (1996); *Linda S. Christian*, 46 ECAB 598 (1995).

⁶ *See Ronald L. Wilson*, 43 ECAB 271 (1991).

The decision of the Office of Workers' Compensation Programs dated June 21, 2000 is reversed and the case is remanded to the Office for determination of the medical conditions and periods of disability related to appellant's October 1, 1998 employment injury.

Dated, Washington, DC
July 9, 2001

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member