

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of JOHN O. DAYES and DEPARTMENT OF THE NAVY,  
NAVAL STATION, Guantanamo Bay, Cuba

*Docket No. 01-192; Submitted on the Record;  
Issued July 27, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty.

On June 21, 2000 appellant, then a 45-year-old supervisory sales clerk, filed a traumatic injury claim alleging that he injured his back and left leg on June 18, 1999 while unloading beer from a truck. The employing establishment controverted the claim on the basis that appellant was on sick leave at the time of the alleged incident.

On August 14, 2000 the Office of Workers' Compensation Programs advised appellant that it needed additional information to process his claim properly, including a rationalized medical opinion from his doctor explaining how the reported work incident caused the claimed injury and evidence establishing performance of duty. The Office gave appellant 30 days to submit the requested information.

The Office, in a decision dated September 14, 2000, denied appellant's claim on the grounds that appellant failed to establish fact of injury.

The Board concludes that appellant has not met his burden of proof in this case.

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim.<sup>2</sup> When a claim for compensation is based on a traumatic injury, the employee must establish the fact of injury by proof of an accident or fortuitous event having relative definiteness with respect to time, place

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Doyle W. Ricketts*, 48 ECAB 167 (1996).

and circumstance and having occurred in the performance of duty and by proof that such accident or fortuitous event caused an “injury” as defined in the Act and its regulations.<sup>3</sup>

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 facts and circumstances and his 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 sufficient doubt on a claimant’s statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>4</sup> However, 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.<sup>5</sup>

Appellant stated that he was injured on June 18, 1999 when he was unloading beer from a truck. His supervisor indicated on appellant’s claim form that he agreed with appellant’s statement that he was injured and disabled for work. The supervisor controverted appellant’s claim for continuation of pay because appellant “was on sick leave.” The Office, in denying the claim, interpreted this to mean that appellant was not at work on June 18, 1999. The Board finds that appellant’s statement is sufficient to establish that an incident occurred at work on June 18, 1999.

However, appellant submitted no medical evidence in response to the Office’s August 14, 2000 letter affording him 30 days to provide such evidence.<sup>6</sup> Therefore, he failed to meet his burden of proof to establish that he sustained an injury while in the performance of duty.

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<sup>3</sup> *Linda S. Christian*, 46 ECAB 598 (1995).

<sup>4</sup> *See Nathaniel Cooper*, 46 ECAB 1053 (1995).

<sup>5</sup> *Louise F. Garnett*, 47 ECAB 639 (1996).

<sup>6</sup> The Board notes that appellant submitted additional evidence with his appeal to the Board. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c); *James C. Campbell*, 5 ECAB 35 n. 2 (1952). However, appellant may submit such evidence to the Office with a request for reconsideration pursuant to 5 U.S.C. § 8128(a).

The decision of the Office of Workers' Compensation Programs dated September 14, 2000 is affirmed as modified.

Dated, Washington, DC  
July 27, 2001

David S. Gerson  
Member

A. Peter Kanjorski  
Alternate Member

Priscilla Anne Schwab  
Alternate Member