

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DAVID R. ZELENY and DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL CENTER, Brecksville, OH

*Docket No. 00-2061; Submitted on the Record;  
Issued May 7, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on March 5, 1999 as alleged.

On April 7, 1999 appellant, then a 49-year-old air conditioning equipment mechanic, filed a claim for an occupational disease for a circulatory problem with his left hand. He indicated that he first became aware of his disease or illness on March 8, 1999 and first realized it was caused or aggravated by his employment on March 26, 1999. Also on April 7, 1999 appellant filed a claim for a traumatic injury sustained on March 8, 1999 for a blockage of an artery of his left arm. He listed the cause of injury as "repetitive strain and trauma to left hand."

The employing establishment submitted an accident report from appellant's supervisor and copies of appellant's employee health record from March 8 and 11, 1999. Appellant submitted a report dated April 6, 1999 from Dr. Ferdinand M. Plecha. In response, a request from the Office of Workers' Compensation Programs for further information, appellant submitted further reports from Dr. Plecha and an April 19, 1999 report from Dr. Michael W. Keith.

By decision dated October 4, 1999, the Office found that the medical evidence was not sufficient to establish that his condition was caused by an employment factor.

Appellant requested a hearing, which was held before an Office hearing representative on February 15, 2000. At this hearing, he testified that he actually sustained the injury in question on March 5, 1999 while working on an ice maker. Appellant described this injury in detail and also testified regarding an incident set forth in Dr. Plecha's reports where he fell down a pull-down staircase.

By decision dated May 10, 2000, an Office hearing representative found that appellant had not established that he sustained an employment injury on March 5, 1999 as alleged. The hearing representative found several inconsistencies between appellant's testimony at the

February 15, 2000 hearing and the other evidence in the record and also found that the medical evidence was insufficient to establish appellant's claim.

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 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.<sup>1</sup> 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.<sup>2</sup>

There are inconsistencies that cast serious doubt on the occurrence of an employment injury on March 5, 1999 as alleged by appellant. At the February 15, 2000 hearing, appellant testified that on Friday, March 5, 1999, while reassembling an ice maker, he struck the evaporator with the heel of his hand to slide it into place, causing his left hand and arm to go numb. He also testified that when he struck this part he cringed and was unable to move his hand for several minutes, that his hand and his arm, almost to the shoulder, were numb. The occurrence of a traumatic injury this serious is inconsistent with appellant not reporting this injury to his supervisor or to the employee health unit on the following Monday, March 8, 1999. Appellant apparently never reported such an injury to his treating physicians, as none of their reports contain a history of a March 5, 1999 injury sustained by striking an object with the heel of his hand.

Appellant also waited over one month to file a claim for compensation for the condition of his hand and arm. When he did file such claims on April 7, 1999, neither the claim for an occupational disease or the one for a traumatic injury attributed his condition to a March 5, 1999 incident or to an episode of striking a component of an ice maker with the heel of his hand. The first time a March 5, 1999 injury was alleged was at a hearing held on February 15, 2000. The late notification of the alleged injury and the lack of confirmation of a March 5, 1999 injury cast serious doubt that it occurred as alleged by appellant.

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<sup>1</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>2</sup> *Dorothy Kelsey*, 32 ECAB 998 (1981).

The decision of the Office of Workers' Compensation Programs dated May 10, 2000 is affirmed.

Dated, Washington, DC  
May 7, 2001

Michael J. Walsh  
Chairman

Willie T.C. Thomas  
Member

A. Peter Kanjorski  
Alternate Member