

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TIMOTHY P. ROBERTS and DEPARTMENT OF VETERANS AFFAIRS,
BILOXI MEDICAL CENTER, Biloxi, MS

*Docket No. 01-893; Submitted on the Record;
Issued November 13, 2001*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury on July 18, 1999 in the performance of duty, causally related to factors of his federal employment.

On July 29, 1999 appellant, then a 46-year-old sign painter, filed a claim alleging that on July 18, 1999 he fell off a chair on which he was standing and hit a wall while attempting to take a sign down, sustaining a scraped right elbow, and neck and head pain. The employing establishment did not controvert appellant's claim, but noted that it occurred during authorized overtime duty. Appellant stopped work on July 29, 1999 and returned to duty on August 1, 1999.

On a duty status report, a physician with an illegible signature noted that he treated appellant for neck stiffness on July 29, 1999, and diagnosed "soft tissue injury."

By letter dated February 10, 2000, the Office of Workers' Compensation Programs requested further information including a comprehensive medical report identifying his injuries and addressing causal relation.

Nothing further was received by the Office.

By decision dated March 15, 2000, the Office rejected appellant's claim finding that he had failed to establish "fact of injury." The Office noted that no medical evidence had been submitted which was sufficient to establish a diagnosis or demonstrate causal relationship.

On June 5, 2000 the Office received a radiology report discussing the results of a March 23, 2000 magnetic resonance imaging (MRI) scan. The report identified multiple cervical disc bulges from C3 through C7.

By facsimile letter dated June 9, 2000, appellant requested reconsideration.

By decision dated July 19, 2000, the Office denied modification of the March 15, 2000 decision finding that the evidence submitted in support was insufficient to warrant modification.

The Board finds that appellant had failed to establish that he sustained an injury on July 18, 1999 in the performance of duty, causally related to factors of his federal employment.

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.¹ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.²

In this case, the Office accepts that appellant experienced the employment incident at the time, place and in the manner alleged. However, appellant has submitted insufficient medical evidence to establish that the employment incident caused a personal injury. The duty status report from an unknown physician did not contain any opinion on causal relation, and did not contain a firm diagnosis of appellant’s alleged injury on July 18, 1997. Further, the Office found that the radiology report merely noted the presence of disc bulges and did not address causation in any way. Therefore, these pieces of evidence are insufficient to establish that appellant sustained a specific injury on July 18, 1999 as alleged.

The belief of a claimant that a condition was caused or aggravated by a specific employment factor is not sufficient to establish causal relation.³ Generally, rationalized medical evidence is required to establish causal relation, which includes a physician’s rationalized medical opinion, based upon a complete factual and medical background, explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by a claimant.⁴

On appeal appellant submitted further evidence, however, as this evidence was not before the Office at the time of its most recent decision, it is not now before the Board on this appeal.⁵

¹ *John J. Carlone*, 41 ECAB 354 (1989). 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 surrounding 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. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); *see also George W. Glavis*, 5 ECAB 363 (1953).

² *Id.* For a definition of the term “injury,” *see* 20 C.F.R. § 10.5(a)(14).

³ *See James W. Griffin*, 45 ECAB 774 (1994); *Lourdes Harris*, 45 ECAB 545 (1994).

⁴ *See Ern Reynolds*, 45 ECAB 690 (1994); *Gary L. Fowler*, 45 ECAB 365 (1994).

⁵ *See* 20 C.F.R. § 501.2(c).

Accordingly, the decisions of the Office of Workers' Compensation Programs dated July 19 and March 15, 2000 are hereby affirmed.

Dated, Washington, DC
November 13, 2001

David S. Gerson
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member