

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AUGUST P. KOZLAK, JR. and DEPARTMENT OF THE ARMY,
NATIONAL GUARD BUREAU, Westover, MA

*Docket No. 01-898; Submitted on the Record;
Issued November 8, 2001*

DECISION and ORDER

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

The issue is whether appellant sustained an injury on November 2, 1999 while in the performance of duty.

On November 2, 1999 appellant, then a 35-year-old avionics electrician, filed a claim alleging that on that date he cut his left thumb as he was working with a razor blade on a connector. Appellant sought medical treatment with Dr. Morris B. Leibowitz, a Board-certified family practitioner. No time was lost from work. The employing establishment did not controvert his claim.

By letter dated June 6, 2000, the Office of Workers' Compensation Programs requested further information including medical evidence containing a history of injury and treatment, and an opinion on causal relation.

By decision dated July 12, 2000, the Office denied appellant's claim finding that the incident had occurred as alleged but that no medical evidence had been submitted to establish that appellant sustained an injury from the incident.

Appellant requested reconsideration and submitted further evidence. However, the case record contains no evidence that his claim was reopened for a further decision by the Office.

The Board finds that appellant has failed to establish that he sustained an injury on November 2, 1999 while in the performance of duty.

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 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 accepted that the incident on November 2, 1999 occurred as alleged. However, appellant failed to submit medical evidence to establish that a personal injury was sustained as alleged. Without medical evidence establishing that a medical condition or injury occurred, causally related to the November 2, 1999 incident, appellant has failed to meet his burden of proof to establish his claim.³

The decision of the Office of Workers' Compensation Programs dated July 12, 2000 is hereby affirmed.

Dated, Washington, DC
November 8, 2001

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member

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 On appeal appellant submitted further evidence. Because this evidence was not considered by the Office, the Board has no jurisdiction to review it on this appeal. Appellant may wish to submit this evidence with a request for reconsideration to the Office.