

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD G. HAWKINS and DEPARTMENT OF DEFENSE,
DEFENSE COMMISSARY AGENCY, McClellan, CA

*Docket No. 02-1572; Submitted on the Record;
Issued November 22, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained a work-related injury in the performance of his federal duties.

The Board finds that appellant has not met his burden of proof to establish that he sustained a work-related injury in the performance of his federal duties.

On November 16, 2001 appellant, then a 35-year-old commissary employee, filed a notice of traumatic injury and claim for compensation (Form CA-1) alleging that on September 19, 2001 he injured his back while grinding meat.

Appellant returned to work and experienced another incident with his back on September 28, 2001 while grinding hamburger. He remained off work for eight days following the September 28, 2001 incident.

In a January 23, 2001 letter, the Office of Workers' Compensation Programs requested more information from appellant including why he waited several weeks to file the claim, a description of the incident and appropriate medical reports.

Appellant did not submit any further information.¹

In a February 22, 2002 decision, the Office denied appellant's claim.

The Board finds that appellant has not met his burden of proof to establish that he sustained a work-related injury in the performance of his federal duties.

¹ Appellant submitted additional evidence to the Board; however, the jurisdiction of the Board is limited to the evidence that was before the Office at the time it issued its final decision; *see* 20 C.F.R. § 501.2(c). This decision does not preclude appellant from submitting additional evidence to the Office along with a request for reconsideration.

An employee who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.³ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an 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 or her subsequent course of action.⁴ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁵ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and 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.⁶ However, an employee's statement alleging 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.⁷

The circumstances in this case raise questions as to whether the incident occurred at the time, place and in the manner appellant alleges. Appellant alleges he was injured on September 19, 2001 yet he did not file a CA-1 until November 16, 2001, nearly two months later. There is no evidence in the record to establish that appellant sought medical treatment on or about September 19, 2001; nor is their evidence suggesting appellant stopped working at that time. Finally, the employing establishment contests the date of injury as well.

In light of these circumstances, including the fact that appellant has submitted no medical evidence, the Board finds that appellant has not submitted *prima facie* evidence of a work-related injury or incident.

² 5 U.S.C. §§ 8101-8193.

³ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁴ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

⁵ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

⁶ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

⁷ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

The February 22, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
November 22, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member