

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SARI H. SIROCCA and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Tucson, AZ

*Docket No. 02-1339; Submitted on the Record;
Issued January 24, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant sustained an injury in the performance of duty on or about February 5, 2002.

On February 6, 2002 appellant, then a 50-year-old nurse, filed a claim alleging that, on February 5, 2002, she sustained an injury to her foot.

By letter dated February 12, 2002, the Office of Workers' Compensation Programs advised appellant that the information she had submitted was insufficient to establish that she sustained an injury as alleged. The Office requested that appellant's treating physician submit a narrative report including a history of injury and all prior industrial and nonindustrial injuries to her foot, copies of all treatment notes and test results related to her claimed condition, and a comprehensive medical report from her treating physician which describes her symptoms and the doctor's opinion, with medical reasons, on the cause of her condition including an explanation if the doctor feels that incidents in her federal employment contributed to her condition. The doctor was also asked to provide a report concerning prognosis, and period and extent of disability.

On February 20, 2002 the Office received witnesses' statements dated February 7, 2002 from appellant's coworkers, none of whom stated that they observed a wheelchair running over appellant's foot, and all of whom noted doubt that such an event occurred.

By decision dated April 12, 2002, the Office denied appellant's claim finding that she had not established that she sustained an injury as alleged.

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty.

To determine whether an 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 An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that his or her disability and/or specific condition for which compensation is claimed are causally related to the injury.

In the case at hand, appellant stated that a wheelchair ran over her foot causing an injury. The record contains no documentation supporting her claim. Indeed, there are witnesses' statements that contradict appellant's narrative. For example, Rocky Nealy, a coworker, stated that he was helping Charlie Hollis, a coworker, place a patient in "one of the better wheelchairs because I tried to push it with the brakes on and it would not budge." After the patient was placed in the wheelchair, the witness related appellant's comment that "Charlie ran over my foot!" Mr. Nealy then stated that the coworker, appellant and he laughed because appellant was standing away from the wheelchair and he thought her comment was intended to be a joke. As appellant has failed to meet her burden to show that she experienced an employment incident at the time, place and in the manner alleged, she has failed to establish her entitlement to benefits.

The April 12, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
January 24, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member

¹ *John J. Carlone*, 41 ECAB 354 (1989).

² *Id.*