

By letter dated June 25, 2003, the Office informed appellant that additional evidence was needed to establish his claim including a physician's opinion as to how his injury resulted in the diagnosed condition.

In a report dated June 16, 2003, Dr. Michael A. Adams, a Board-certified family practitioner, stated that appellant presented for a general six-month review of his hypertension and hypercholesterolemia and that he was continuing to have some right wrist pain. He noted that an x-ray showed a small flick of bone off the distal ulnar styloid indicative of small avulsion injury of the ulnar carpal ligament structure in that area. Dr. Adams diagnosed right ulnar carpal ligament sprain with slow improvement.

In a report dated June 18, 2003, the physical therapist, Christine McCarraher, stated that she was treating appellant for right wrist ulnar carpal ligament sprain and appellant reported that on approximately May 13, 2003 he injured his right wrist as he was reaching for a parcel in his employment. In a progress note dated June 20, 2003, Ms. McCarraher stated that appellant had a significant bump on the dorsum of the wrist superior to the lunate.

In an attending physician's report dated July 3, 2003, Dr. Adams indicated that on June 16, 2003 appellant hurt his right wrist while picking up a small parcel from the area behind the window and the pain had bothered him since that time. He diagnosed ulnar carpal ligament sprain and checked the "yes" box that the condition was work related.

A magnetic resonance imaging scan dated July 16, 2003 showed, *inter alia*, a mild extensor carpi radialis brevis and longus tenosynovitis and mild extensor digitorum and indicis tenosynovitis.

By decision dated July 29, 2003, the Office denied the claim, stating that the evidence was not sufficient to establish that he sustained an injury as defined by the Federal Employees' Compensation Act.¹

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally, "fact of injury" consists of two components, which must be considered in conjunction with one another.² First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in

¹ 5 U.S.C. § 8101 *et seq.*

² *Deborah L. Beatty*, 54 ECAB _____ (Docket No. 02-2294, issued January 15, 2003).

the manner alleged.³ 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.⁴

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.⁵ An employee has not met his 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.⁶ 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 had been established.⁷ However, an employee's statement alleged 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.⁸

ANALYSIS

In this case, the evidence is insufficient to establish that appellant sustained an injury at the time, place and in the manner alleged because there are inconsistencies in the date appellant stated that the alleged incident happened and how it happened. In his claim form dated June 17, 2003, appellant stated that at work on June 16, 2003 he felt a sharp pain at the outside of his right wrist when he reached to pick up a small parcel from the floor with his right hand. He sought medical treatment for his wrist with Dr. Adams on June 16, 2003 the same day the incident allegedly occurred. In his June 16, 2003 report, however, Dr. Adams made no reference to any kind of a wrist injury that occurred that day at work. He stated that appellant presented for a general six-month review of his hypertension and hypercholesterolemia and was "continuing" to have some wrist pain. Dr. Adams reviewed an x-ray and diagnosed right ulnar carpal ligament sprain with slow improvement. Appellant reported the alleged incident to his supervisor on June 16, 2003 and appellant's supervisor indicated that appellant had sought medical treatment for his wrist prior to June 16, 2003 and questioned whether it was an aggravation. In her June 18, 2003 report, the physical therapist, Ms. McCarraher, noted that she was treating appellant for right wrist ulnar carpal ligament sprain and that appellant reported that he injured his right wrist on May 13, 2003 as he was reaching for a parcel in his employment. The date May 13, 2003 is not consistent with the date appellant identified in his claim form.

³ *Robert J. Krstyen*, 44 ECAB 227, 229 (1992); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *Id.*

⁵ *Edward W. Malaniak*, 51 ECAB 280 (2000).

⁶ *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁷ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987).

⁸ *Edward W. Malaniak*, *supra* note 5; *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

In his July 3, 2003 attending physician's report, Dr. Adams indicated that appellant told him that he first injured his right wrist at work on June 16, 2003 picking up a parcel and his wrist had bothered him since that time. But appellant's account of the incident to Dr. Adams on that date is inconsistent with his supervisor's statement that appellant had a wrist problem prior to June 16, 2003 and Dr. Adams' statement in his June 16, 2003 report that appellant "was continuing" to have wrist pain. In its June 25, 2003 letter, the Office gave appellant the opportunity to clarify how and when the incident happened but appellant provided no explanation for the inconsistencies in the evidence. Although appellant sought medical treatment the day of the alleged incident, June 16, 2003, and reported the incident on that date to his supervisor, the inconsistencies in the medical reports regarding the date the incident happened, *i.e.*, whether it actually occurred on June 16, 2003 or prior to that date and whether it actually occurred at work, cast serious doubt on whether the alleged incident occurred at the time, place and in the manner alleged. Appellant has, therefore, failed to establish his claim.⁹

CONCLUSION

The Board finds that appellant has not established that his injury occurred at the time, place and in the manner alleged due to inconsistencies in the evidence regarding the time and place it occurred.

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2003 decision of the Office of Workers' Compensation be affirmed.

Issued: April 8, 2004
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

⁹ Given that appellant did not establish the factual basis of his claim, it is not necessary to discuss the probative value of the medical reports in the record. *See Tracey P. Spillane*, 54 ECAB _____ (Docket No. 02-2190, issued June 12, 2003).