

**United States Department of Labor
Employees' Compensation Appeals Board**

DOUGLAS SINGER, Appellant)	
)	
and)	Docket No. 04-1892
)	Issued: December 6, 2004
DEPARTMENT OF THE AIR FORCE, TINKER)	
AIR FORCE BASE, OK, Employer)	
)	

Appearances:
Douglas Singer, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chairman
MICHAEL E. GROOM, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On July 21, 2004 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated July 30, 2003 and May 20, 2004 finding that he had not established an injury on February 10, 2003 in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty on February 10, 2003, as alleged.

FACTUAL HISTORY

On June 12, 2003 appellant, then a 44-year-old quality branch chief, filed a traumatic injury claim alleging that on February 10, 2003 he slipped and fell while in the performance of duty injuring his right elbow and back as well as sustaining a torn rotator cuff in his right shoulder. Appellant's supervisor controverted his claim. On March 17, 2003 appellant's

supervisor stated that appellant first informed him of his shoulder injury on March 4, 2003. He stated that appellant fell on the last day of bad weather and included the date of February 10, 2004 in parentheses.

The Office requested additional factual and medical evidence on June 26, 2003.

In a magnetic resonance imaging (MRI) scan report dated March 5, 2003, Dr. Robert N. Jarman, a radiologist, stated that appellant fell on the ice five weeks prior to testing, which would place appellant's date of injury at the end of January 2003.

The employing establishment health facility notes dated March 6, 2003 listed appellant's date of injury as five to six weeks previously, which would place the date of injury as the latter part of January early February 2003.

In reports dated March 14, 2003, Dr. Rick D. Beller, an orthopedic surgeon, stated that appellant fell on the ice in late January 2003 resulting in a right shoulder injury. Dr. Beller repeated this history of injury in a report dated July 14, 2003 which also stated that appellant's rotator cuff tear was a direct result of the injury sustained when appellant fell on the ice on January 20, 2003.

By decision dated July 30, 2003, the Office denied appellant's claim finding that he had not established that the employment incident occurred, as alleged. The Office noted that appellant had provided varying dates of injury on his claim form and to his treating physicians.

Appellant requested reconsideration on February 29, 2004 and described how his injury occurred. Appellant stated that he had mentioned his fall to his supervisor on the date that it occurred. He resubmitted the medical evidence already included in the record. By decision dated May 20, 2004, the Office reviewed appellant's claim on the merits and found that he had not submitted sufficient evidence to establish the date that his injury occurred.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

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.

¹ 5 U.S.C. §§ 8101-8193.

² *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the 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 subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.³

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

The Board finds that appellant has not established fact of injury due to inconsistencies in the evidence that cast serious doubt as to whether the specific traumatic incident occurred at the time, place and in the manner alleged. Appellant informed his supervisor on March 4, 2003 that his injury had occurred on the last day of bad weather, which his supervisor believed to be February 10, 2003. The MRI scan on March 5, 2003 reported that his injury had occurred five weeks earlier, which would place his date of injury at the end of January 2003. The employing establishment health facility notes listed appellant's date of injury as five or six week prior, placing the date of injury at the end of January or early February 2003. Dr. Bellar, an orthopedic surgeon, stated in various reports that appellant's date of injury was the end of January and on July 14, 2003 gave a date of January 20, 2003. This contradictory evidence creates uncertainty as to the time, place and in the manner in which appellant experienced an incident at work.

Appellant failed to submit sufficient evidence to explain the discrepancies in his case. This casts doubt on his assertion that he injured his right shoulder when he slipped on ice on February 10, 2003. The Office requested that appellant submit additional factual and medical evidence to explain when his injury occurred. He failed to submit such evidence. The circumstances of this case, therefore, cast serious doubt upon the occurrence of a February 10, 2003 incident. Given the inconsistencies in the evidence regarding when he sustained his injury,

³ *Id.*

⁴ *Id.*

the Board finds that there is insufficient evidence to establish that appellant sustained a fall on February 10, 2003 in the performance of duty as alleged.⁵

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on February 10, 2003 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 20, 2004 and July 30, 2003 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 6, 2004
Washington, DC

Alec J. Koromilas
Chairman

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member

⁵ *Id.*; see also *Mary Joan Coppolino*, 43 ECAB 988 (1992).