United States Department of Labor
Employees' Compensation Appeals Board

TERRY L. THOMAS, Appellant	)	
and	)	**Docket No. 06-825**
	)	**Issued: June 20, 2006**
U.S. POSTAL SERVICE, POST OFFICE, Prescott, AZ, Employer	)	

Appearances:
Terry L. Thomas, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On March 3, 2006 appellant filed a timely appeal of the decision of the Office of Workers' Compensation Programs dated December 29, 2005 denying his claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d)(2), the Board has jurisdiction to review the merits of this case.

ISSUE

The issue is whether appellant established that he sustained an injury in the performance of duty on October 11, 2005, as alleged.

FACTUAL HISTORY

On November 8, 2005 appellant, then a 53-year-old city letter carrier, filed a traumatic injury claim, alleging that on October 11, 2005 he injured his right shoulder while pushing a mail cart. The employing establishment controverted the claim, stating that on November 8, 2005 appellant first notified his supervisor that he had hurt his shoulder. When the supervisor asked how this occurred, appellant indicated that he hurt himself on October 13, 2005 while casing mail. However, when appellant filed his claim, the date of injury changed to indicate that

appellant sustained injury on October 11, 2005 while pushing a mail cart. The employing establishment noted that appellant's supervisor checked the time clock rings and discovered that appellant did not work on October 13, 2005.

By letter to appellant dated November 21, 2005, the Office asked appellant to submit further evidence.

Witness statements were submitted by appellant's colleagues. In an undated statement, John McCans indicated that appellant came to the employing establishment on October 15, 2005 complaining about his shoulder and indicated that he thought it was from casing too much mail. In a statement dated November 17, 2005, Daniel T. Riordan indicated that sometime in mid-October appellant came to work after being off for several days with his arm in a sling. Mr. Riordan indicated that appellant told him that the injury was from casing too much mail.

Appellant submitted a November 8, 2005 duty status report from Dr. Candace Reid, an osteopath specializing in family medicine. She reported that appellant complained of right shoulder pain resulting from pushing a cart on October 11, 2005. She diagnosed right shoulder supraspinatus tendon tear. Appellant also submitted a duty status report by a physician whose signature is illegible dated November 22, 2005. She indicated that appellant sustained a right shoulder supraspinatus tear while pushing a cart on October 11, 2005.

By decision dated December 29, 2005, the Office denied appellant's claim. The Office determined that appellant had not met his burden of proof for establishing that he sustained an injury due to discrepancies concerning the time and manner he was injured.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[2] These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[3]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[3] *Alvin V. Gadd*, 57 ECAB ____ (Docket No. 95-1596, issued October 25, 2005); *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

employment incident at the time, place and in the manner alleged.[4] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[5] An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.[6] A consistent history of the injury as reported on medical reports to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.[7] 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.[8] Although 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,[9] an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.[10]

Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.[11]

ANALYSIS

In the instant case, appellant stated on his claim form that he injured himself on October 11, 2005 while pushing a mail cart. However, appellant's supervisor indicated that appellant told her that he injured his arm on October 13, 2005 while casing mail, a date that appellant did not work. There are also two witness statements indicating that appellant stated that he injured himself sometime around mid-October 2005 while casing mail. There is no evidence in the record that appellant sought medical treatment prior to November 8, 2005, almost one month after the alleged incident. At that time, appellant told his physician, Dr. Reid, that he injured himself pushing a cart on October 11, 2005. These inconsistencies in the record with regard to the date of injury and how the injured occurred, combined with the fact that appellant did not seek medical treatment until almost one month after the alleged injury, cast serious doubt on appellant's claim. While the Office requested that appellant explain these discrepancies and

[4] *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

[5] *John J. Carlone*, 41 ECAB 354 (1989).

[6] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[7] *Id.* at 255-56.

[8] *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

[9] *Id.*

[10] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

[11] *John J. Carlone*, *supra* note 5; *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995). The term "traumatic injury" is defined at 20 C.F.R. § 10.5(ee).

inconsistencies, the record contained no clarification. For these reasons, 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 October 11, 2005 as alleged.[12]

CONCLUSION

The Office properly determined that appellant had not established that he sustained an injury in the performance of duty on October 11, 2005, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 29, 2005 is affirmed.

Issued: June 20, 2006
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

[12] Appellant submitted additional evidence after the Office's December 29, 2005 decision, but the Board cannot consider such evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c).