United States Department of Labor
Employees' Compensation Appeals Board

STACY E. KOTIS, Appellant	)	
and	)	**Docket No. 06-87**
	)	**Issued: May 10, 2006**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SAFETY ADMINISTRATION, Clearwater, FL, Employer	)	

Appearances:
Capp P. Taylor, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 13, 2005 appellant filed a timely appeal from the merit decisions of the Office of Workers' Compensation Programs dated May 17 and July 29, 2005. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on or about June 6, 2003.

FACTUAL HISTORY

On March 18, 2004 appellant, then a 41-year-old transportation security screener, filed a traumatic injury claim alleging that, on June 6, 2003, while working as a baggage screener, he felt a sharp pain in his low back while lifting passenger bags. By letter dated April 12, 2004, the Office requested that appellant provide medical support for his claim.

On July 31, 2003 appellant first sought treatment from Dr. Brett R. Bolhofner, a Board-certified orthopedic surgeon, who indicated that appellant had previously injured his ankle and broke a fibula while playing football for the Army in the 1980's. He noted that appellant worked at Clearwater-St. Petersburg Airport lifting heavy bags. He listed his impression as chronic right ankle pain and noted that he could not explain appellant's chronic level of discomfort based upon his clinical and radiographic examinations. In an August 23, 2003 follow-up report, Dr. Belhofner indicated that appellant was doing well on Vioxx. He noted that appellant did not feel that his current level of symptoms would warrant immobilization or injection.

Dr. Belhofner referred appellant to Dr. Kanta Shah, a Board-certified physiatrist, for evaluation of appellant's chronic back problems. In a report dated September 22, 2003, Dr. Shah noted appellant's history of a right ankle fracture while playing football in Germany in 1998. He noted that appellant had experienced pain since this injury. Dr. Shah indicated that there was a possibility that appellant's back pain was initiated after the ankle fracture when the leg was cast in 1998, but that the possibility of underlying degenerative disc disease should be ruled out. In a December 4, 2003 report, Dr. Shah discussed appellant's history by stating, "He has difficulty lifting suitcases at the airport where he is working. His right ankle injury was in Germany and is service connected." In a report dated December 10, 2003, Dr. Shah indicated that appellant had low back pain which he treated with caudal epidural steroid injection, fluoroscopy and epidurography. On January 19, 2004 Dr. Shah indicated that appellant continued to complain of pain in the lower back that was aggravated by standing, bending and lifting. He recommended that appellant continue light-duty work.

By letter dated May 7, 2004, appellant's manager requested that the employing establishment note that the correct injury date should be June 16, 2003.

By decision dated May 17, 2004, the Office denied appellant's claim for the reason that the evidence was not sufficient to establish that he sustained an injury as defined by the Federal Employees' Compensation Act. The Office indicated that the evidence was insufficient to establish that the event occurred as alleged.

In a March 10, 2005 note, Dr. Shah assessed appellant's condition as chronic low back pain with arthritic exacerbation following the work-related incident and status post fracture right ankle service connected. He further noted, "[Appellant] reports main aggravation of the pain when he threw a suitcase at work in 2002."

In a note dated April 19, 2005, appellant indicated that he submitted a request to leave work on June 6, 2003 as he had been trying to medicate himself for back pain but could not take the pain any longer. In a note received by the Office on May 20, 2005, appellant indicated that the lapse in time from his original injury until the time he sought medical attention was due to his attempts at self-medication and remaining employed.

By letter dated May 16, 2005, appellant, through his attorney, requested reconsideration of the May 17, 2004 decision. Counsel contended that appellant injured his back in December 2002, not June 6 or 16, 2003. He noted that his supervisors knew of the incident at the time it occurred.

In a decision dated July 29, 2005, the Office found that the new evidence was not sufficient to warrant modification of the prior decision. The Office found that there were too many factual discrepancies to establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under the Act 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 filed within the applicable time limitation 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.[1] 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]

In order to determine whether an employee actually sustained an 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.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.[4] 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 the circumstances and his subsequent course of action.[5] 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.[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 has been established.[7] 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,[8] an employee has

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

[2] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

[3] *Elaine Pendleton*, *supra* note 1.

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

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

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

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

[8] *Robert A. Gregory*, 40 ECAB 478 (1989).

not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.[9]

ANALYSIS

The Board finds that appellant has failed to establish that the claimed June 6, 2003 incident occurred as appellant alleged due to numerous discrepancies in the evidence. In his claim form, appellant alleged that the injury occurred on June 6, 2003 submitted some nine months after the fact. He subsequently indicated that it actually occurred in December 2002. This discrepancy is compounded by the fact that none of the physicians who examined appellant in 2003 or 2004 noted appellant's alleged employment injury. The first mention of appellant's work injury as a possible cause of appellant's medical condition was in Dr. Shah's March 10, 2005 report. Furthermore, appellant did not file his claim until March 16, 2004, nine months after the alleged June 6, 2003 injury and over one year after December 2002. These discrepancies cast serious doubt on appellant's claim that the injury occurred as alleged.[10] Accordingly, appellant has not met his burden of proof in establishing fact of injury.

CONCLUSION

Appellant has not established that he sustained an injury in the performance of duty on or about June 6, 2003.

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

[10] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 29 and May 17, 2005 are affirmed.

Issued: May 10, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

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