

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

R.I., Appellant

and

**DEPARTMENT OF JUSTICE, BUREAU OF
PRISONS, Coleman, FL, Employer**

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**Docket No. 07-1957
Issued: January 16, 2008**

Appearances:
Appellant, 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
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 18, 2007 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated June 22, 2007 which denied his traumatic injury claim. 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 has met his burden of proof in establishing that he sustained a back injury in the performance of duty.

FACTUAL HISTORY

On May 1, 2007 appellant, then a 31-year-old maintenance worker supervisor, filed a Form CA-1, notice of traumatic injury, claiming that on April 27, 2007 he experienced back pain while he was subduing an inmate and applying restraints. In a witness statement, Larry Rivera, a coworker, noted that he was responding to an assistance call and observed appellant run into a recreation cage and subdue an inmate. Appellant stopped work on May 1, 2007.

By letter dated May 21, 2007, the Office advised appellant to submit additional factual and medical evidence needed to establish his claim.

In a decision dated June 22, 2007, the Office denied appellant's claim as the evidence was not sufficient to establish that appellant sustained the alleged injury on April 27, 2007. The Office found that the evidence was insufficient to establish that appellant experienced the claimed incident on April 27, 2007. The Office further noted that there was no medical evidence which provided a diagnosis that could be connected to the claimed events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation 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 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

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.

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

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.¹⁰

ANALYSIS

The Office denied appellant's claim on the grounds that he failed to establish that the events occurred as alleged. The evidence supports that appellant responded to an assistance call and was subdued an inmate by applying restraints on April 27, 2007. The statement from Mr. Rivera, appellant's coworker, advised that he witnessed appellant run into the recreation cage and subdue an inmate. This account of events was not disputed by the employing establishment. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances. Appellant has established that he experienced the employment incident on April 27, 2007.

The Board finds, however, that there is no medical evidence in the record at the time of the Office's June 22, 2007 decision which establishes that the April 27, 2007 work incident caused or aggravated a back injury. On May 21, 2007 the Office advised appellant of the medical evidence needed to establish his claim. Appellant did not submit a medical report from an attending physician addressing how the April 27, 2007 incident caused or aggravated his claimed condition. He noted on the CA-1, notice of traumatic injury, that he was treated by Dr. Frank Pellegrino, a Board-certified family practitioner and Dr. Michael Hill, a Board-certified neurosurgeon, on April 30, 2007. However, he failed to submit any medical evidence in support of his claim prior to the June 22, 2007 decision. Therefore, he has failed to establish a *prima facie* claim for compensation.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.¹¹ Causal relationships must be established by

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

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

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

¹⁰ See *Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

¹¹ See *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

rationalized medical opinion evidence. Appellant failed to submit such evidence, and the Office therefore properly denied his claim for compensation.¹²

CONCLUSION

The Board finds that appellant has failed to establish that he sustained an injury on April 27, 2007 in the performance of duty, causally related to factors of his federal employment.

ORDER

IT IS HEREBY ORDERED THAT the June 22, 2007 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: January 16, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹² Following issuance of the Office's June 22, 2007 decision, appellant submitted medical evidence to the Office. However, the Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision; therefore, the Board is unable to review evidence submitted by appellant after the Office's decision. *See* 20 C.F.R. § 501.2(c). This decision of the Board does not preclude appellant from requesting reconsideration before the Office.