

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

T.J., Appellant)
and) Docket No. 08-360
DEPARTMENT OF THE ARMY,) Issued: May 16, 2007
INSTALLATION MANAGEMENT AGENCY,)
West Point, NY, Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge

JURISDICTION

On November 15, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated September 5, 2007 finding that he had not established an injury 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 July 18, 2007, as alleged.

FACTUAL HISTORY

On July 23, 2007 appellant, then a 57-year-old motor vehicle operator, filed a traumatic injury claim alleging that on July 18, 2007 he injured his low back lifting boxes of supplies, cleaning and bending in the performance of his duties in Building 626. His supervisor disputed

the claim noting that appellant did not immediately report the injury and that he was not assigned to work in Building 626.

In support of his claim, appellant submitted work release notes dated July 16 and 20, 2007 as well as a magnetic resonance imaging (MRI) scan which was dated July 9, 2007 and listed appellant's date of injury as July 7, 2007. A treatment note dated July 16, 2007 diagnosed large disc herniation at L5-S1. The employing establishment medical officer provided appellant with a sick leave slip on July 18, 2007.

The Office requested additional factual and medical evidence from appellant in a letter dated July 27, 2007. The Office requested that appellant describe where he was and what he was doing when the injury occurred as well as a detailed description of how he believed he injured himself. The Office also requested medical evidence explaining how appellant's work activity resulted in his diagnosed condition. Appellant's supervisor, Robert Ward, contorted appellant's claim in a memorandum dated July 20, 2007. He stated that appellant used leave from June 7 through 22, 2007. Appellant requested leave again beginning on July 3, 2007 and returned to work on July 10, 2007 only to use sick leave on July 12, 2007. He returned to full duty on July 16, 2007 and on July 18, 2007 requested a claim for a traumatic injury. At that point appellant allegedly informed his supervisor that his injury occurred in June 2007. He also submitted documentation from a hospital indicating that he was discharged on July 31, 2007.

By decision dated September 5, 2007, the Office denied appellant's claim finding that the evidence was not sufficient to establish that the injury occurred at the time, place and in the manner alleged. The Office noted that appellant was not assigned to work in Building 626, that he did not provide a detailed factual explanation of how his injury occurred and that there was no medical evidence to establish that a condition had been diagnosed in connection with the incident. The Office noted that most of the medical evidence predated appellant's alleged employment injury and that he failed to provide the requested factual information in support of his claim.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² 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 is causally related to the employment injury. These are the

¹ Following the Office's September 5, 2007 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

essential elements of each and every 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 injury⁴ in the performance of duty, it must first be determined whether a “fact of injury” has been established. 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.⁵

ANALYSIS

Appellant filed a claim alleging that he sustained a back injury on July 18, 2007 in Building 626. His supervisor disputed the claim on the grounds that appellant was not assigned to work in Building 626. Appellant submitted limited medical evidence in support of his claim diagnosing a herniated disc. The medical evidence indicates that appellant sustained a back injury on July 7, 2007. Appellant’s supervisor submitted a statement describing appellant’s leave usage and stated that appellant first informed him that he injured his back in June 2007. This statement also indicated that appellant did not work on July 7, 2007, the date of injury provided by the medical evidence. The evidence of record does not support appellant’s claim for an employment injury on July 18, 2007. Appellant has not submitted any factual or medical evidence supporting that he sustained an employment incident on July 18, 2007 which resulted in a back condition as alleged on his claim form. His statements are not consistent with the surrounding facts and circumstances and his subsequent course of action as the medical evidence supporting a back injury largely predates appellant’s alleged date of employment injury. The Board finds that there are sufficient discrepancies in the evidence so as to cast serious doubt upon the validity of the claim.

CONCLUSION

The Board finds that appellant has not submitted sufficient factual evidence to meet his burden of proof in establishing that the alleged employment incident of July 18, 2007 occurred at the time, place and in the manner alleged. Appellant has, therefore, not met his burden of proof in establishing an injury in the performance of duty.

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ The Office’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the September 5, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 16, 2007
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board