

condition. Appellant noted that his physician did not attribute his pain symptoms to a left shoulder condition until August 2007.

By letter dated January 8, 2008, the Office advised appellant that he needed to submit additional factual and medical evidence in support of his claim. It asked appellant to submit statements from any persons who witnessed his injury or had immediate knowledge of it, to state the immediate effects of the injury and what he did immediately thereafter and to explain why he delayed seeking medical attention. The Office requested copies of all medical reports pertaining to the alleged work incident from July 6, 2006 to the present. It provided 30 days to submit the requested information.

In a report dated December 6, 2007, Dr. John M. Koller, a Board-certified family practitioner, stated:

“[Appellant] presents with left anterior chest pain. He has a complex story last year July 2006. [Appellant] fell at work and strained his left shoulder. It was outstretched up over his head and strained it. The discomfort continued for a couple of weeks and he went in to be evaluated. During that evaluation, they did an EKG [electrocardiogram] and discovered Q-waves indicating an old MI [myocardial infarction] (per history) which led to a workup in Anchorage resulting [in] him getting an angiogram and they found small vessel disease in his heart starting him on medications.... [Appellant] had a follow-up in September 2007 a stress echo and was told that everything was normal [and] that he was doing well. He had reperfusion and ... his heart was better, but he has continued having left shoulder pain. [Appellant] was on vacation for about two weeks in Arizona and was symptom free. [W]hen he returned and went back to work the pain recurred.”

Dr. Koller noted that appellant did not display excessive discomfort on examination. He stated that appellant had pain in the left anterior upper shoulder area with direction palpation; appellant was able to reproduce the pain when he bent forward and twisted his upper body or when he joined his left arm across his chest. Dr. Koller performed an EKG, which showed evidence of an old MI in the inferior leads. He diagnosed left anterior chest pain, likely musculoskeletal and probably work related; history of atherosclerotic cardiovascular (AC) disease with an MI; hypertension and hypercholesterolemia. Dr. Koller outlined work restrictions for light duty, though appellant was uncertain as to whether he can do this where he is working.

Dr. Koller stated that appellant appeared to be fairly comfortable, with minimal discomfort with left shoulder range of motion, but tolerated good movement. He noted no specific focal point of discomfort or pain, with palpation and some slight tenderness over the AC joint, as confirmed by an MRI scan. Dr. Koller diagnosed a strained left shoulder and mild degenerative overuse arthritis, work related. He recommended that appellant continue on light duty for another three weeks. Dr. Koller also noted that appellant had stable angina, which he did not think would be aggravated by light-duty exertion.

In a January 7, 2008 report, Dr. Koller stated:

“Follow-up on workmen’s compensation related right shoulder and chest wall pain. [Appellant] is feeling fairly stable, but still having some discomfort now and then. Overall, he seems to be doing well. [Appellant] has been on a light[-]duty restriction in the interim, which seems to be working out well for him. He states that he still feels the pain in the left anterior chest wall and it shoots to the back. [Appellant] has known coronary artery disease and at this point, cardiology elected not to do anything invasive at this time.”

Dr. Koller stated that appellant did not have any tenderness or pain over the shoulder joint itself with palpation. He noted some minimal discomfort and pain with palpation over the upper costal margin on the left side, anteriorly, with no AC joint pain or tenderness. Dr. Koller advised that this was the area where there were some degenerative changes found on an MRI scan. He diagnosed left upper shoulder costal arthritis, stable and recommended that he maintain work restrictions for another month to avoid exacerbation.

By decision dated February 14, 2008, the Office denied appellant’s claim, finding that he failed to submit sufficient medical evidence to establish fact of injury. It noted that appellant stated on his CA-1 form that he injured his left shoulder when he slipped in a cooler on July 6, 2006. The Office stated, however, that he did not seek treatment until August 2006, at which time his physician considered his heart pain related and did not file a claim until December 2007.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that 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 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 injury in the performance of duty, it must first be determined whether a “fact of injury” has been established. First, 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.⁴ Second, the employee must

¹ 5 U.S.C. § 8101 *et seq.*

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place and in the manner alleged or whether the alleged injury was in the performance of duty.⁶ Nor can it find fact of injury if the evidence fails to establish that the employee sustained an “injury” within the meaning of the Act. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with surrounding facts and circumstances and his subsequent course of action.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 cast doubt on an employee’s statements in determining whether he or she has established his or her claim.⁸

ANALYSIS

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged. He stated on his CA-1 form that he injured his left shoulder on July 6, 2006 trying to catch himself after stumbling. The record contains no contemporaneous medical reports documenting that he received treatment for a left shoulder injury. Appellant indicated that he initially sought treatment in August 2006, but his physician Dr. Koller believed at that time that his pain was probably due to a heart condition. Dr. Koller stated in his December 6, 2007 report that appellant reported a “complex story,” beginning in July 2006, which indicated that he fell at work and strained his left shoulder. When the shoulder discomfort continued for several weeks he went in for an evaluation, during which an EKG indicated an old MI; this led to his undergoing an angiogram and being treated for a heart condition. Appellant stated on the CA-1 form that his physician did not tell him he had a work-related left shoulder condition until August 2007. Dr. Koller stated that appellant told him in September 2007 that he attributed his left shoulder pain to work activities such as lifting, butchering, stocking and moving a lot of heavy boxes, which aggravated his pain.

Based on the record, therefore, there are discrepancies in the accounts of injury appellant provided to different people. This contradictory evidence created an uncertainty as to the time, place and in the manner in which he sustained his alleged left shoulder injury. Appellant allegedly injured his left shoulder on July 6, 2006, but did not provide notification to the employing establishment for 17 months.⁹ While he stated that he sought treatment from his physician in

⁵ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(e)(e).

⁶ See *Pendleton*, *supra* note 2.

⁷ See *Gene A. McCracken*, 46 ECAB 593 (1995); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991).

⁸ See *Constance G. Patterson*, 42 ECAB 206 (1989).

⁹ *Id.*

August 2006, Dr. Koller indicated that he was treated at this time for a heart condition, not a left shoulder condition. When appellant saw Dr. Koller again in August -- or September -- 2007, he did at that time opine that appellant was experiencing pain due to a left shoulder condition. However, while Dr. Koller believed appellant's shoulder symptoms were work related, he stated that they were attributable to the cumulative effect of his usual duties as a meat cutter, not to a traumatic episode.

In addition, appellant failed to submit to the Office a corroborating witness statement in response to the Office's request. This casts additional doubt on his assertion that he strained his left shoulder while trying to maintain his balance on July 6, 2006. The Office requested that appellant submit additional factual and medical evidence explaining how he injured his left shoulder on the date in question. Appellant failed to submit such evidence. Therefore, given the inconsistencies in the evidence regarding how appellant sustained his injury, the Board finds that there is insufficient evidence to establish that appellant sustained an injury in the performance of duty as alleged.¹⁰

CONCLUSION

The Board finds that the Office properly found that appellant failed to meet his burden of proof to establish that he sustained a left shoulder injury in the performance of duty on July 6, 2006.¹¹

¹⁰ See *Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

¹¹ The Board notes that appellant submitted additional evidence to the record following the April 12, 2004 Office decision. The Board's jurisdiction is limited to a review of evidence which was before the Office at the time of its final review. 20 C.F.R. § 501(c).

ORDER

IT IS HEREBY ORDERED THAT the February 14, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2009
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