

United States Department of Labor
Employees' Compensation Appeals Board

G.R., Appellant

and

DEPARTMENT OF VETERANS AFFAIRS,
CENTRAL ARKANSAS VETERANS
HEALTHCARE SYSTEM, Little Rock, AR,
Employer

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Docket No. 09-241

Issued: August 14, 2009

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Judge

COLLEEN DUFFY KIKO, Judge

JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 3, 2008 appellant filed a timely appeal of the Office of Workers' Compensation Programs' August 19, 2008 decision, denying his claim for compensation. 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 met his burden of proof in establishing that he sustained a traumatic injury on June 25, 2008 in the performance of duty.

FACTUAL HISTORY

On June 30, 2008 appellant, then a 51-year-old laundry machine operator, filed a traumatic injury claim alleging that on June 25, 2008 at 8:15 a.m. he injured his lower back and sustained back pain and spasms from pulling straps to a hook-up to be hoisted. He stopped work

on June 25, 2008 and returned on June 30, 2008. Appellant's supervisor, Keith Smith, advised that appellant stated that his back pain was not work related. Mr. Smith also asserted that the injury was not reported on the date it occurred and that it occurred off of the employment establishment's premises.

On July 18, 2008 the Office advised appellant of the factual and medical evidence necessary to establish his claim and allowed him 30 days to submit additional evidence. It requested that he address the assertion by the employing establishment that the incident did not occur as alleged.

Appellant submitted nurses' reports dated June 25, 2008 noting his complaint of right flank pain and diagnosing back pain and hypertension. In a June 25, 2008 emergency room report, Dr. Lisa Petursson, a Board-certified internist, noted his complaint of bilateral mid and lower back pain, which began after he pulled clothes off an assembly line. She further noted that appellant sustained pain and spasms after walking away. A nurse's report dated June 30, 2008 from Golden R. Edwards noted that appellant experienced back spasms after hooking up straps onto a cart on June 25, 2008. The nurse noted that appellant notified the employing establishment that this was not a work-related injury. A duty status report, Form CA-17, with an illegible signature, also dated June 30, 2008 diagnosed thoracic sprain and noted that he injured his lower back pulling straps to hook to a hoist. The form also noted that appellant could return to full duty without restrictions.

On June 25, 2008 witness statements were submitted by Tonya Russell and Maurice Wilson, employees of the employing establishment. Mr. Wilson advised that, at about 8:45 a.m., on June 25, 2008, appellant "came into the office ... and stated that he [was] having back spasms and was in pain. I asked [him] did he injure himself while working [he] said no. [Appellant] stated [that] he pushed the button that makes the hoist go up that [i]s when the pain started." Ms. Russell noted being in the office on June 25, 2008, when appellant came in to the office "complaining about having a muscle spasm in the lower part of his back. He said it was not work related, the only thing he was doing when it happened was that he reach[ed] up to push the knob and that [is] when he felt the pain in his back." Both witnesses indicated that appellant was unable to walk to the employee health unit and that an ambulance was called to take him to an emergency room.

In a July 26, 2008 statement, appellant noted that, on June 25, 2008, he had been on duty for about an hour and a half prior to the claimed injury. He stated that he came to work feeling fine and did not have any symptoms before arriving for duty. Appellant stated that he disagreed with statements of others indicating that he said that the injury did not occur at work. He advised that he "mentioned that I felt pain in my back after hooking up the straps to the hoist and then the next time I hooked the straps to the hoist the pain started while I was walking back to the computer to check on another load to take out of the dryer. I mentioned that I have never experienced anything like this before...."

By decision dated August 19, 2008, the Office denied appellant's claim for compensation finding the evidence insufficient to establish that the events occurred as alleged. It also found that there was no medical evidence with a diagnosis that could be connected to the claimed event.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of his 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; that an injury was sustained while 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.²

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. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.³

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. 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 a *prima facie* claim for compensation. However, 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 and persuasive evidence.⁴

ANALYSIS

The record reflects that appellant is a laundry machine operator who claimed a low back injury after pulling straps at work on June 25, 2008. The employing establishment controverted the claim asserting that the injury occurred off the employing establishment's premises. The record reflects that appellant was on the employing establishment's premises on June 25, 2008 when the claimed incident occurred.⁵ However, although he was on the employing

¹ 5 U.S.C. §§ 8101-8193.

² *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *Id.*

⁴ *M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *Louise F. Garnett*, 47 ECAB 639 (1996).

⁵ The Board has generally held that an injury occurring on the industrial premises during working hours is compensable unless the injury is established to be within an exception to such general rule. *M.M.*, 60 ECAB ____ (Docket No. 08-1510, issued November 25, 2008); *Dora J. Ward*, 43 ECAB 767 (1992).

establishment's premises at the time of the alleged incident, he has not met his burden of proof to establish that the claimed injury occurred as alleged.

Appellant alleges that he injured his lower back at work on June 25, 2008 after pulling straps to a hook-up to be hoisted. The factual evidence contains inconsistencies, however, that cast doubt about the June 25, 2008 incident as the cause of an injury.⁶ On appellant's claim form, his supervisor, Mr. Smith, indicated that appellant stated that his back pain was not work related. The June 25, 2008 witness statements from Ms. Russell and Mr. Wilson both stated that, soon after the alleged injury occurred, he stated that he did not injure his back while working. Both witness statements were provided on the date of injury, prior to appellant's June 30, 2008 traumatic injury claim. The nurse's report dated June 30, 2008 also indicated that he had notified the employing establishment that his back condition was not a work-related injury. As noted, an employee's statement must be consistent with the surrounding facts and circumstances in order to establish a *prima facie* claim for compensation.⁷ Although appellant, on July 26, 2008, denied stating that his condition was not work related, he provided no further evidence to support his assertion nor did he offer any explanation as to why the consistent contemporaneous statements of others were erroneous. As the witness statements from Ms. Russell and Mr. Wilson as well as the June 30, 2008 nurse's report all recall that he stated that his injury was not work related, these inconsistencies cast doubt on his claim.

The record also contains inconsistencies regarding the description of the alleged work incident on June 25, 2008. Appellant alleges that his back injury occurred after pulling straps to a hook-up to be hoisted. However, Ms. Russell and Mr. Wilson did not indicate that he mentioned pulling straps. Instead, they advised that appellant felt pain after pushing a button to make the hoist go up. Ms. Russell, in particular, noted that he "said it was not work related, the only thing he was doing when it happened was that he reached up to push the knob and that when he felt the pain in his back." Moreover, the medical evidence provides different accounts of the alleged incident. For example, Dr. Petursson reported that appellant sustained his back injury from pulling clothes off of an assembly line and the June 30, 2008 nurse's report noted that he was hooking up straps onto a cart. Appellant did not offer any explanation to harmonize these differing histories regarding the nature of his activity at the onset of his symptoms. As this evidence is not consistent with appellant's report of the claimed injury, this cast further doubt on the validity of the claim.

For these reasons, the Board finds that appellant has not met his burden of proof in establishing that the June 25, 2008 incident occurred as alleged.⁸

⁶ On appeal, appellant asserts that he never stated that he was not injured on the job.

⁷ See *supra* note 4.

⁸ As appellant did not establish that the employment incident occurred at the time, place and manner alleged, the Board need not consider whether the medical evidence. See *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007).

CONCLUSION

The Board finds that appellant did not meet his burden of proof in establishing that he sustained a traumatic injury on June 25, 2008 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated August 19, 2008 is affirmed.

Issued: August 14, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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