

Dr. Brown related that appellant stated that she “may have been bitten [by a spider] ... early this summer.” He opined that the scabbed area could be “compatible” with a spider bite, but it was difficult to determine as several months had passed since the date of the bite. Dr. Brown opined that this condition was not likely to heal and recommended that it be surgically excised.

By letter dated October 20, 2007, the Office notified appellant that the evidence she submitted had been reviewed and was insufficient to support her claim because it did not demonstrate that she was performing any employment duty at the time of the alleged injury.

In a note dated November 16, 2007, appellant reported that she was sitting at her desk, typing on her computer, when she was bitten by the spider. She noted that this was the second time she had been bitten by a brown spider. Appellant alleged that the buildings at Camp Lincoln were infested with brown spiders. She alleged that she experienced a small prick on her abdomen. Appellant alleged that she brushed “whatever was there off” and that she has serious vision problems and therefore did not see what caused the small prick. She reported that when she got home that evening she discovered a lump on her abdomen. Appellant alleged that she sought medical treatment the next day for her spider bite. She did not identify the physician who treated her, but she explained that she was given a prescription and was told that the antibiotic she was already taking for bronchitis would take care of the spider bite.

In a November 27, 2007 report, Dr. Brown reported that appellant was scheduled to undergo a panniculectomy to excise a large area of fat necrosis, “possibly related to an old spider bite.”

Appellant submitted a December 29, 2007 report signed by Dr. David J. Stahl, a Board-certified anatomic and clinical pathologist, who diagnosed appellant with focal skin ulceration and necrosis with underlying abscess formation and fat necrosis.

By decision dated January 3, 2008, the Office denied appellant’s claim because the evidence of record was insufficient to establish that she sustained an injury as defined by the Federal Employees’ Compensation Act.

Appellant submitted a February 21, 2008 note in which Dr. Daniel E. Lanzotti, Board-certified in family medicine, reported that appellant was seen on June 15, 2007 and that she had sustained an insect bite, “presumably spider,” to her abdominal wall. Dr. Lanzotti reported that this became infected and eventually required surgical excision, which also became infected and required further treatment. He opined that complications from appellant’s underlying medical conditions were exacerbated, leading to recurrent hospitalization and wound care.

On February 28, 2008 appellant requested reconsideration.

By decision dated March 17, 2008, the Office denied modification of the prior decision after merit review.

On September 28, 2008 appellant, through her attorney, requested reconsideration.

Appellant submitted additional evidence. A November 1, 2007 report of Dr. Brown reported that the wound on appellant's panniculus was "essentially the same," that the scab had partially come off and appellant was experiencing drainage in the area.

A January 9, 2008 memorandum from the employing establishment notified employees that the buildings at Camp Lincoln were scheduled to be sprayed to control the reclusive brown spider.

An August 27, 2008 note signed by Dr. Lanzotti reported that appellant sustained a spider bite on her low abdominal wall on June 12, 2007. Dr. Lanzotti reported that the spider bite did not heal, resulting in a wound requiring surgical excision. He reported that appellant's workplace was infested with spiders. Dr. Lanzotti also reported that appellant required recurrent hospitalization for wound infections and wound dehiscence. He opined that it "[was] clear that [appellant] had the injury at work, and given her underlying medical condition, with diabetes and ... panniculus of the abdominal wall, the infection was difficult to control and required surgical intervention."

By decision dated December 17, 2008, the Office denied modification of its prior decision because the evidence appellant submitted was insufficient to establish causal relationship.

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. 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.¹ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.²

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.³ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁴ 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

¹ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

² *T.H.*, 59 ECAB ____ (Docket No. 07-2300, issued March 7, 2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

³ *M.H.*, 59 ECAB ____ (Docket No. 08-120, issued April 17, 2008); *George W. Glavis*, 5 ECAB 363, 365 (1953).

⁴ *S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

statements in determining whether a *prima facie* case has been established.⁵ 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 or persuasive evidence.⁶

ANALYSIS

Appellant attributed her condition to a spider bite she received on June 14, 2007. The Board finds that she has not satisfied her burden of proof due to inconsistencies in the evidence that cast serious doubt as to whether the specific traumatic incident occurred at the time, place and in the manner alleged and therefore the Office properly denied her claim.

In its January 3, 2008 decision, the Office denied appellant's claim because the evidence did not establish that she was actually bitten by a spider. The Office's subsequent decisions dated March 17 and December 17, 2008, denied modification of its prior decision because the evidence she submitted was insufficient to establish that she sustained an injury causally related to her employment. The Board finds that appellant has not established that the alleged June 14, 2007 incident actually occurred as alleged.

The initial inquiry in analyzing a traumatic injury claims requires determining if the employee submitted sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁷ Appellant's statements concerning the June 14, 2007 incident are not sufficient to support the conclusion that she was actually bitten by a spider on that day. She alleged that she was bitten by a spider while using a computer at work on June 14, 2007. Appellant did not file her claim until September 10, 2007. She alleged that she experienced a "small prick" on her abdomen. Appellant alleged that she brushed "whatever was there off" but admits never seeing what produced this "small prick," spider or otherwise. Furthermore, she stated that she did not notice the lump on her abdomen until later that evening.

The record contains no contemporaneous medical reports documenting that appellant received medical treatment for a spider bite. While Dr. Lanzotti reported on February 21, 2008 that he had treated appellant on June 15, 2007 for a June 12, 2007 spider bite, appellant did not provide any contemporary reports of the June 15, 2007 examination. His February 21, 2008 report has limited probative value. Dr. Lanzotti reported that appellant sustained an insect bite, "presumably spider," to her abdominal wall that became infected and eventually required surgical excision. This is a conjectural statement as it is based on a presumption unsupported by sufficient factual evidence. Dr. Lanzotti's report did not provide any medical observations of appellant's abdominal area specifically documenting a spider bite, or any other medical findings to substantiate that appellant had actually sustained a brown spider bite. In his August 27, 2008 note, Dr. Lanzotti's reported that appellant sustained a spider bite on her low abdominal wall on June 12, 2007. He reported that the spider bite did not heal, resulting in a wound that required

⁵ *M.H.*, *supra* note 3; *John D. Shreve*, 6 ECAB 718, 719 (1954).

⁶ *S.P.*, *supra* note 4; *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

⁷ *Supra* note 1.

surgical excision. Dr. Lanzotti reported that appellant's workplace was infested with spiders. He also reported that she required recurrent hospitalization for wound infections and wound dehiscence. Dr. Lanzotti opined that it "[was] clear that [appellant] had the injury at work, and given her underlying medical condition, with diabetes and ... panniculus of the abdominal wall, the infection was difficult to control and required surgical intervention." This note repeats appellant's allegations regarding her alleged injury, but offers no probative medical evidence in support. Dr. Lanzotti consistently failed to provide any medical findings or observations to substantiate his report of a spider bite. This report is also of reduced probative value because while appellant reported that the alleged spider bite occurred on June 14, 2007, Dr. Lanzotti reports that the alleged incident occurred on June 12, 2007.

Dr. Brown's reports have little probative value. He opined that the wound on appellant's panniculus was "compatible" with a spider bite but could also be "just an area of fat necrosis" which was "possibly related to an old spider bite." Dr. Brown apparently first examined appellant on October 12, 2007 some five months after the alleged injury. He stated that due to the passage of time since the date appellant was allegedly bitten, determining if the wound was caused by a spider bite or fat necrosis was difficult. These statements are conjectural as they were unsupported by a sufficient medical rationale. As a matter of law, such terms as "suspected," "could," "may," "might be," and "possible" indicate that the report is equivocal, speculative or conjectural and, therefore, the report is of limited probative value.⁸ These deficiencies reduce the probative value of Dr. Brown's reports and therefore his reports are insufficient to satisfy appellant's burden of proof.

Dr. Stahl's medical report has little probative value. He diagnosed appellant with focal skin ulceration and necrosis with underlying abscess formation and fat necrosis. Dr. Stahl's report did not address whether these diagnosed conditions were causally related to the identified June 14, 2007 spider bite nor does his report document a history of appellant sustaining a spider bite at work on June 14, 2007. Therefore this report has little probative value and is insufficient to satisfy appellant's burden of proof.

The Board finds that appellant has not established that she sustained an injury in the performance of duty on June 14, 2007 as alleged because she did not submit sufficient evidence to establish that she actually experienced the incident at the time, place and in the manner alleged.

CONCLUSION

The Board finds appellant has not met her burden to establish that she sustained an injury in the performance of duty on June 14, 2007.

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.3(g) (April 1993).

ORDER

IT IS HEREBY ORDERED THAT the December 17, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 8, 2009
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