

In an undated attending physician's report, Dr. Percy Conrad May, an internist, noted that appellant injured her right shoulder while lifting on the job on September 16, 2008. He stated that he first examined her on January 12, 2009 and that she had no concurrent or preexisting injuries. Dr. May diagnosed right shoulder tendinitis and checked a box "yes" indicating that appellant's condition was caused or aggravated by her employment activities.

A nurse's September 16, 2008 note indicated that appellant was treated on September 15, 2008 and diagnosed with right arm pain. It listed September 14, 2008 as the date of injury and advised that appellant could return to work on September 15, 2008 with restrictions.

On March 18, 2009 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence.

In an April 21, 2009 decision, the Office denied appellant's claim finding that, although the claimed incident occurred, there was no medical evidence with a diagnosis that could be connected to the event.

Appellant requested reconsideration on June 8 and October 1, 2009. She asserted that the Office offered to extend the deadline for her to submit evidence, but that her claim was denied before she submitted anything. In a September 15, 2008 hospital report, Dr. Harlan Krinsky, a Board-certified internist, who noted appellant's complaint of neck and right arm pain beginning the morning of September 14, 2009. He diagnosed right arm pain. A September 15, 2008 treatment note from a medical assistant noted appellant's complaint of neck and right arm pain that began on Sunday.¹ The medical assistant indicated no obvious injury, but that the pain became progressively worse when appellant fed mail into a machine. The medical assistant checked a box "yes" indicating that this was a work-related injury.

In an April 10, 2009 report, Dr. May noted appellant's report of a job injury that occurred while working on September 16, 2008. Since that time appellant complained of severe neck and shoulder pain. Dr. May diagnosed cervical radiculopathy. He opined that appellant's symptomatology and physical findings coincided with the September 16, 2008 work incident. Work status forms from Dr. May dated February 16 and March 23, 2009 indicated that appellant could work light duty.

In a June 10, 2008 hospital report, Dr. Suheal Habiba, Board-certified in family medicine, noted that appellant twisted her right wrist that morning at work. He diagnosed right wrist sprain. A hospital report of the same date with an illegible signature noted appellant's report of twisting her right arm while using trays at work on June 10, 2008. In a June 26, 2008 report, Dr. Saritha Vankana, a Board-certified internist, noted that appellant had right arm pain and advised that she return to work with restrictions. His work status notes of June 17 and September 17, 2008 indicated that appellant was unable to work due to pain of the right arm, neck and back. The September 17, 2008 note stated that appellant was unable to work since September 16, 2008.

¹ September 15, 2008 fell on a Monday. The Sunday referred to would be September 14, 2008.

Appellant also submitted treatment records from an unidentified healthcare provider dated May 20 to September 17, 2008. A June 17, 2008 record indicated that appellant's right arm was still hurting and that she also had neck and right shoulder pain. A September 17, 2008 report noted right shoulder and right arm pain since September 14, 2008 and that appellant had been hurt at work. It noted that appellant worked on September 15, 2008 but left early and was unable to return to work. It also diagnosed shoulder and upper back pain. A partial report dated June 12, 2008 noted that appellant sprained her right arm at work lifting a heavy crate two days prior. Appellant also submitted November 26 and December 21, 2002 reports from Dr. Agapito Pangan, a family physician, who stated that she had a brief period of disability due to neck and right shoulder pain. Dr. Pangan noted that appellant's history of injury consisted of right shoulder swelling and discomfort from an August 19, 2002 work injury.

In an October 30, 2009 decision, the Office denied modification of its April 21, 2009 decision finding the medical evidence was insufficient to establish that appellant's claimed conditions were causally related to the September 16, 2008 work incident.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of 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; 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.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. 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.⁴

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,

² 5 U.S.C. §§ 8101-8193.

³ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *Barbara R. Middleton*, 56 ECAB 634 (2005).

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.⁵

ANALYSIS

The record reflects that appellant is a mail processor who claimed injury to her arm, neck, shoulder and fingers after sweeping a stacker and changing trays of mail on September 16, 2008. The Office found that the claimed incident occurred. The Board finds, however, that appellant did not meet her burden of proof to establish that the traumatic incident on September 16, 2008 occurred as alleged.

Appellant stated that on September 16, 2008 she injured her arm, neck and shoulder after sweeping a stacker and changing trays of mail. However, she did not file her claim until February 24, 2009, approximately five months after the date of the incident, without any explanation for her delay in filing. Appellant failed to describe how the actions or incidents on September 16, 2008 contributed to her claimed condition as she provided only a general description of her activities on that date. She provided no confirmation of the alleged incident by statements of witnesses, coworkers or supervisors. Appellant also did not stop work on September 16, 2008, but continued working until January 12, 2009. As noted, circumstances such 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 appellant's claim.

The evidence of record also contains inconsistencies that cast doubt as to the date of the alleged work incident. Reports dated September 15, 2008 from Dr. Krinsky and a medical assistant indicated that appellant experienced neck and right arm pain beginning September 14, 2008. A September 16, 2008 nurse's report and a September 17, 2008 treatment note indicated that appellant developed right arm pain due to a work incident on September 14, 2008. However, the date of incident listed in these reports conflict with appellant's claim of September 16, 2008 the reports of Dr. May, who indicated that she injured her right shoulder and neck in a September 16, 2008 work incident. 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.⁶

The medical evidence provides different accounts of appellant's history of right arm and neck conditions. In an undated attending physician's report, Dr. May indicated that appellant had no preexisting right arm condition. However, Dr. Habiba's June 10, 2008 report noted that she twisted her right wrist at work that morning. This prior right arm injury was further corroborated by treatment notes dated June 12 and 17, 2008 indicating right arm and neck pain due to lifting a heavy crate at work on June 10, 2008. Furthermore, Dr. Pangan's reports dated November 26 and December 21, 2002 indicate that appellant had a right shoulder and neck condition due to an August 12, 2002 work incident.

⁵ *M.H.*, 59 ECAB 461 (2008); *Louise F. Garnett*, 47 ECAB 639 (1996).

⁶ *See Thomas L. Agee*, 56 ECAB 465 (2005).

The Board finds that the evidence does not provide a consistent history of when the claimed incident occurred. There is conflicting evidence regarding whether it happened on September 16, 2008 or September 14, 2008. In view of this and appellant's delay in filing her claim, the Board finds that there are such inconsistencies that cast serious doubt on the validity of the claim.⁷ Therefore, appellant has not met her burden of proof in establishing that the September 16, 2008 incident occurred as alleged.⁸

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on September 16, 2008 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the October 30, 2009 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: November 19, 2010
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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

⁷ *S.P., supra* note 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).

⁸ As appellant did not establish that the employment incident occurred at the time, place and manner alleged, the Board need not further consider the medical evidence.