

In reports dated November 2, 2009, Dr. Gary P. Jacobs, an internist, remarked that he was “not sure” about the particulars of appellant’s injury. He diagnosed a right arm and shoulder contusion.

The employing establishment controverted the claim on November 3, 2009, pointing out that appellant did not explain what happened to her and that the medical evidence did not establish any connection between her federal employment and the diagnosed contusion.

On November 9, 2009 the Office informed appellant that additional evidence was needed to establish her claim. It gave her 30 days to submit information identifying the specific employment incident or factor alleged to have caused her injury and medical opinion evidence establishing causal relationship.

Appellant submitted several medical records. In an information worksheet dated November 2, 2009, she noted that she felt right shoulder pain “Friday Evening,” could not move her arm after waking up on “Sat 11-1-09” and continued to experience severe pain.

In November 2, 2009 form reports, Dr. Jacobs listed appellant’s description that she was driving and carrying a mail satchel using her right shoulder on October 30, 2009. At or around 8:30 p.m., two hours after leaving work, she was sitting on a couch when she felt pain in her right shoulder. The following morning, appellant could not move her arm. On physical examination, Dr. Jacobs observed swelling of the right anterior shoulder, tenderness of the sternoclavicular and acromioclavicular joints, biceps tendon and rotator cuff, decreased sensation and range of motion (ROM) and a positive impingement sign. He also noted subacromial and subdeltoid tenderness. X-ray results were normal. Dr. Jacobs diagnosed a right arm and shoulder contusion. Progress notes dated November 6 and 12, 2009 from Drs. Jacobs and John Kasawa, a Board-certified, family practitioner, indicated that appellant’s condition improved.

By decision dated December 9, 2009, the Office denied appellant’s claim, finding that the evidence was insufficient to establish the occurrence of a specific employment event, incident or exposure that caused an alleged injury.

LEGAL PRECEDENT

An employee seeking compensation under the Federal Employees’ Compensation Act¹ has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,² including that she is an “employee” within the meaning of the Act and that she filed her claim within the applicable time limitation.³ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁴

¹ 5 U.S.C. §§ 8101-8193.

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

³ *R.C.*, 59 ECAB 427 (2008).

⁴ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. The employee must also submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

An employee's statement 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 Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden in 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. 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, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁷

ANALYSIS

Appellant has not submitted sufficient evidence to show that an employment incident occurred as alleged in the performance of her duties as a mail carrier on October 30, 2009 as her claim lacks specificity regarding the claimed mechanism of injury.⁸

On her claim form, appellant merely stated that she woke up on October 31, 2009 and could not move her right arm due to pain. On November 9, 2009 the Office informed her that additional factual evidence was needed to establish her claim and gave her an opportunity to clarify the details of her claimed injury. In response, appellant submitted medical records from Dr. Jacobs and her patient information worksheet dated November 2, 2009. These documents noted that she drove and carried a mail satchel using her right shoulder on October 30, 2009 but sustained right shoulder pain while sitting on a couch two hours after she left work. Appellant was unable to move her arm the following morning. The evidence does not establish time and place of injury or establish the manner in which she hurt her right shoulder. While appellant mentioned that she drove and carried a mail satchel, she did not clearly assert that this activity resulted in the alleged injury. Furthermore, she did not respond to the Office's request that she describe the employment incident or factors that caused her claimed injury. The Board finds that appellant has failed to provide sufficient factual and medical evidence to establish a *prima facie* claim.⁹

⁵ *T.H.*, 59 ECAB 388 (2008).

⁶ *Gregory J. Reser*, 57 ECAB 277 (2005).

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

⁸ *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006).

⁹ *See O.W.*, 61 ECAB ____ (Docket No. 09-2110, issued April 22, 2010).

On appeal, appellant argues that she was injured on the job and that her attending physician concluded that her diagnosed right shoulder contusion was work related. As noted, the evidence did not sufficiently establish that an employment incident occurred on October 30, 2009 as alleged. As appellant did not establish that an incident occurred, it is not necessary to consider the medical evidence with regard to causal relationship.¹⁰

CONCLUSION

The Board finds that appellant did not establish that she sustained a right shoulder injury in the performance of duty on October 30, 2009.¹¹

ORDER

IT IS HEREBY ORDERED THAT the December 9, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

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

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

¹⁰ *See id.*

¹¹ The Board notes that the record on appeal contains evidence which the Office received after its December 9, 2009 decision. Appellant also submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal. 5 U.S.C. § 501.2(c). This, however, does not preclude appellant from having such evidence considered by the Office as part of a formal request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.