

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

C.G., Appellant )

and )

**DEPARTMENT OF VETERANS AFFAIRS,** )  
**VETERANS BENEFITS ADMINISTRATION,** )  
**Houston, TX, Employer** )

---

**Docket No. 10-1986**  
**Issued: May 17, 2011**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

RICHARD J. DASCHBACH, Chief Judge  
ALEC J. KOROMILAS, Judge  
COLLEEN DUFFY KIKO, Judge

**JURISDICTION**

On July 29, 2010 appellant filed a timely appeal from May 21 and July 26, 2010 merit decisions of the Office of Workers' Compensation Programs denying his traumatic injury claim. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> and 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 to establish that he sustained an injury in the performance of duty on October 20, 2009.

**FACTUAL HISTORY**

On October 20, 2009 appellant, then a 44-year-old clerk and assistant, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left wrist and hand injury on that same

---

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

date when he was sorting and placing mail in the slots of the credenza and felt intense pain radiating from his wrist down to his thumb and index finger. He noted that it was painful to grasp anything. Appellant informed the employing establishment on October 20, 2009 and stopped work the following day. He returned to work on October 22, 2009. The employing establishment controverted the claim.

By letter dated October 27, 2009, the Office requested additional medical evidence from appellant.

In an October 20, 2009 emergency room medical report, Dr. Hasmukh Sheth, Board-certified in emergency medicine, noted that appellant was complaining of left hand pain when he was sorting mail at work which had begun the previous day, October 19, 2009. Dr. Monica Huang, a Board-certified diagnostic radiologist, reported that the radiology report of appellant's left hand showed that the punctuate radiodensity projected over the second metacarpal could represent a small metallic foreign body. She also noted that small osteophytes were present at the base of the proximal phalanx of the thumb and the head of the first metacarpal bone which suggested mild degenerative changes. Dr. Sheth reported that the radiology report of appellant's left hand showed no fractures and diagnosed a hand sprain. Appellant was advised he could return to work on October 22, 2009 with no restrictions.

In an October 20, 2009 duty status report, Dr. Steven Thompson, a Board-certified orthopedic surgeon, stated that appellant must wear a cast/splint at work and was not to use his hands. He noted appellant's history as a bilateral hand injury when moving files at work and diagnosed bilateral de Quervain's tendinitis of the wrist.

In an October 21, 2009 medical report, Dr. Thompson stated that appellant was transferring heavy files the week before his visit and developed severe pain on the radial aspect of the right wrist for which he was given a splint for at the emergency room. In the same report, he reported that pain and swelling in appellant's left wrist began two days earlier, October 19, 2009 and had worsened significantly one day earlier, October 20, 2009. Dr. Thompson noted that appellant had tenderness in his left wrist and diagnosed de Quervain's tendinitis.

In an October 27, 2009 emergency room medical report, appellant complained of continued left hand pain. Dr. Swapan Dubey, Board-certified in emergency medicine, noted that appellant's hand evaluation showed pain and tenderness along the tendons of the thumb especially with abduction or movement of the thumb and diagnosed tendinitis.

By letter dated October 30, 2009, the employing establishment controverted appellant's claim. It noted that he had filed two traumatic injury claims in less than one month. The employing establishment also stated that appellant allegedly injured his right hand on September 28, 2009 when filing folders and again on October 20, 2009 when sorting documents. Appellant was on light duty where he was not using his hands.

In medical notes dated November 4 and 11, 2009, Dr. Thompson reported that appellant's condition had improved with injections and anti-inflammatory medication and should continue to wear his splint. He did not specify as to which wrist he was referring. Appellant also submitted prescription slips dated October 21 to November 30, 2009 from Dr. Thompson.

By decision dated December 14, 2009, the Office denied appellant's claim finding that the evidence did not establish that the injury occurred as alleged. It specifically noted that there were inconsistencies in the mechanism of injury described in the medical reports submitted. The October 20, 2009 emergency room report stated that appellant's pain began on October 19, 2009 and the x-ray showed a metallic foreign body embedded in the left hand. Dr. Thompson's October 21, 2009 report stated that appellant's hand began to hurt two days earlier, October 19, 2009.

On February 11, 2010 appellant requested reconsideration of the Office decision.

In an October 21, 2009 medical history report, Dr. Thompson noted that appellant was sorting and filing mail in the office and felt pain in his left hand which started on Monday, October 19, 2009 and began to worsen on Tuesday, October 20, 2009.

In an October 22, 2009 emergency medical report, Dr. Kenekwkwu Ofordeme, Board-certified in emergency medicine, noted that appellant's left hand pain started Monday, October 19, 2009 and continued to persist. He diagnosed tendinitis and arthralgia of the wrist.

By letter dated February 18, 2010, the employing establishment noted that, although appellant reported that emergency room medical report conveyed the possible presence of a small metallic foreign body, he had visited a second physician who did not detect any presence of a foreign body. Dr. Thompson's medical notes dated October 28 to April 26, 2010 were submitted. In a January 12, 2010 addendum to his previous October 28, 2009 note, he stated that appellant had presented x-rays of his left wrist and there was no evidence of any fracture, foreign body or artifact identified.

By decision dated May 21, 2010, the Office affirmed its December 14, 2009 decision. On June 21, 2010 appellant requested reconsideration of the Office decision.

By decision dated July 26, 2010, the Office affirmed its May 21, 2010 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>2</sup> has the burden of establishing 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 filed within the applicable time limitation period of the Act<sup>3</sup> and that an injury was sustained in the performance of duty.<sup>4</sup> These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

---

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.<sup>6</sup> 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 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.<sup>7</sup>

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He must also establish that, such event, incident or exposure caused an injury.<sup>8</sup> Once an employee establishes that he sustained an injury in the performance of duty, he has the burden of proof to establish that any subsequent medical condition or disability for work, for which he claims compensation is causally related to the accepted injury.<sup>9</sup>

### ANALYSIS

The Office denied appellant's claim, finding that he did not establish that the October 20, 2009 incident happened at the time, place and in the manner alleged. It noted that there were inconsistencies in the mechanism of injury described in the medical reports submitted. The Board finds, however, that the evidence of record is sufficient to establish that the October 20, 2009 injury occurred, as alleged.

Appellant alleged a left wrist and hand injury on October 20, 2009 when he was sorting and placing mail in the credenza and felt intense pain radiating from his left wrist down to his thumb and index finger.<sup>10</sup> The record reflects that he stopped work and sought immediate medical treatment on that same date at Saint Lukes Hospital. Appellant also notified his supervisor and filed a traumatic injury claim on the same date as the incident.

In his October 20, 2009 medical report, Dr. Sheth obtained a history that appellant was complaining of left hand pain which had begun the previous day, October 19, 2009 when he was sorting mail at work. He diagnosed left hand sprain. On October 21, 2009 Dr. Thompson reported that appellant's left wrist began to hurt and swell two days earlier, October 19, 2009 and

---

<sup>6</sup> See *Mary Jo Coppolino*, 43 ECAB 988 (1992).

<sup>7</sup> *Allen C. Hundley*, 53 ECAB 551 (2002); *Early David Seal*, 49 ECAB 152 (1997).

<sup>8</sup> See generally *John J. Carlone*, 41 ECAB 354 (1989); see also 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (e) (1999) (occupational disease or illness and traumatic injury defined). See *Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

<sup>9</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>10</sup> An employment factor which connects the alleged incident with appellant's job is clearly described and not disputed by the Office.

worsened significantly one day earlier, October 20, 2009. He noted that appellant had tenderness in the left wrist and diagnosed de Quervain's tendinitis. In an October 22, 2009 medical report, Dr. Ofordeme reported that appellant's left hand pain started on Monday, October 19, 2009 and continued to persist, diagnosing tendinitis and arthralgia of the wrist. X-rays were obtained on October 20, 2009 and Dr. Huang reported that there could be a small metallic foreign body embedded in the left hand. In a January 12, 2010 addendum, Dr. Thompson stated that appellant had presented x-rays of his left wrist and there was no evidence of any fracture, foreign body or artifact identified.

This evidence does not cast such inconsistencies as to cast doubt on the validity of appellant's claim. Dr. Thompson, Dr. Ofordeme and Dr. Sheth all noted that appellant complained of left hand pain beginning on October 19, 2009. This does not preclude the fact that appellant could have had a preexisting condition which was aggravated by the October 20, 2009 employment incident. The possibility of a metallic foreign body in appellant's hand also does not negate the possibility that he sustained a left hand injury on October 20, 2009. The fact that he might have had a preexisting condition and complained about it does not, by itself, justify the Office finding that the October 20, 2009 incident did not occur, as alleged.<sup>11</sup>

A prior injury will likely be relevant in the Office's determination concerning whether appellant sustained a continuing condition or disability resulting from the October 20, 2009 incident, but it does not preclude a subsequent injury from occurring. The mere fact that appellant's physicians noted a prior condition cannot be construed as a professional assessment that no injury occurred on October 20, 2009. This is not a situation where the employee continued to work without apparent difficulty or delayed in obtaining medical treatment and notifying his supervisor. Appellant sought treatment, filed his traumatic injury claim and informed his supervisor on the same date as the October 20, 2009 incident.

Consequently, the Board finds that the factual and medical evidence of record establish that the injury occurred at the time, place and in the manner alleged. The inconsistencies as found by the Office for rejecting the claim are insufficient for rejecting that the October 20, 2009 incident occurred, as alleged.<sup>12</sup> The case will be returned to the Office for further development of the medical evidence.

### **CONCLUSION**

The Board finds that the October 20, 2009 injury occurred while appellant was in the performance of duty. The case is returned to the Office for further development to determine whether the event caused an injury.

---

<sup>11</sup> See *Willie J. Clements*, 43 ECAB 244 (1991).

<sup>12</sup> See *M.H.*, 59 ECAB 461 (2008); *Bill H. Harris*, 41 ECAB 216 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 26 and May 21, 2010 Office of Workers' Compensation Programs' decisions are set aside. The case is remanded to the Office for further action in conformance with this decision.

Issued: May 17, 2011  
Washington, DC

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

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board