United States Department of Labor
Employees' Compensation Appeals Board

W.L., Appellant	)	
and	)	**Docket No. 12-693**
	)	**Issued: September 17, 2012**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Hickory, NC, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 7, 2012 appellant filed a timely appeal from the December 21, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied his injury claim. Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 sustained an injury in the performance of duty on August 28, 2010, as alleged.

FACTUAL HISTORY

On August 31, 2010 appellant, then a 64-year-old mail handler, filed a traumatic injury claim alleging that he injured his right shoulder on August 28, 2010 after he unlatched an all-

[1] 5 U.S.C. § 8101 *et seq.*

purpose carrier (APC), which was full of mail in tubs. "The tub was so heavy that when I grabbed it and turned something pulled."

The acting supervisor stated that on August 28, 2010 at 2:15 p.m. she instructed appellant to "go prep on the 100." Appellant stated that he gave her a hard time, that he did not think it was right, that he thought he should be on the dock. He was very angry and disrespectful and mumbled something about the acting supervisor not being a good supervisor. Fifteen minutes later the acting supervisor did not see appellant at the 100 and eventually found him outside her office, at which time he handed her a request for or notification of absence. "Appellant said he was sick and was going home."

A coworker stated that on August 28, 2010 appellant approached him at the flat sorter "and told [him] that he was going home because he felt that [someone else] should be working on the flat sorter and he should be on the dock."

Dr. Jeremy C. Johnson, an orthopedic surgeon, examined appellant on August 31, 2010. He reported a one and a half year history of cervical spine pain radiating down the arm into the hand. Dr. Johnson noted: "The patient denies any trauma."

Dr. Johnson examined appellant again on September 10, 2010. He stated: "At the time of [appellant's] original exam[ination] he stated [that] he had no trauma. Now the patient is stating that on August 28[, 2010] while at work at [the employment establishment] he was lifting 45[-] to 50[-]pound objects and since that time he has had neck and upper extremity pain." Dr. Johnson released appellant to work with no restrictions.

Appellant stated that he reported the injury to the acting supervisor on August 28, 2010. He gave her a "sick slip form" and went home because she did not ask him if he wanted to go to the hospital. Appellant also explained that the accident happened on a Saturday, and the earliest he could set an appointment with his doctor was August 31, 2010. He told Dr. Johnson that he had hurt his shoulder by lifting 50-pound tubs from an APC, but Dr. Johnson misunderstood and checked his shoulder for an old injury. At a later appointment, when Dr. Johnson stated that he did not know appellant had a new workers' compensation claim, appellant told him and "we got the matter straightened out."

In a May 17, 2011 decision, OWCP denied appellant's injury claim. It found that the evidence failed to establish that the August 28, 2010 incident occurred, as alleged.

At a hearing before an OWCP hearing representative, appellant testified that his coworker's statement was wrong. He explained that he hurt his shoulder before the coworker came to work. Appellant had started work on the flat sorter and got the mail out of the APC "and it hit my shoulder and when I turned and twisted, every -- it got about 40 containers in an APC and every one of them weigh from 50 to 60 pounds and I twisted wrong and I pulled my neck but he know that." He then told his coworker that he got hurt, that it was not his regular job, and that he would not have gotten hurt if [someone else] had been on that job.

Appellant also explained that when he went to prep on the 100 as the acting supervisor instructed, "the container was so high, I pulled one out, it was taller than I was and it was so heavy I twisted and everything pulled all in my neck and my back, my right." When the acting

supervisor found him outside her office, he told her, "I said look. I'm sick, I got hurt, I'm going home."

In a December 21, 2011 decision, OWCP's hearing representative affirmed the denial of appellant's traumatic injury claim. She found that inconsistencies were sufficient to raise doubts whether the incident on August 28, 2010 occurred at the time, place and in the manner alleged.

On appeal, appellant stated that all available evidence had been submitted. He contends that he got hurt on the job and sought compensation and his doctor's bills paid.

LEGAL PRECEDENT

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[2] An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his claim. 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.[3]

A person who claims benefits under FECA has the burden of establishing by a preponderance of the reliable, probative and substantial evidence the essential elements of his claim, including the fact that he sustained an injury at the time, place and in the manner alleged.[4] To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[5]

ANALYSIS

The Board finds that there are inconsistencies in the evidence. Appellant claims compensation for a right shoulder injury occurring on August 28, 2010, when he grabbed a heavy tub of mail and turned. He testified that he told a coworker he got hurt. Appellant also testified that he told the acting supervisor he was sick, he got hurt and he was going home.

[2] *Id.* at § 8102(a).

[3] *John J. Carlone*, 41 ECAB 354 (1989).

[4] *Henry W.B. Stanford*, 36 ECAB 160 (1984); *Samuel L. Licker*, 4 ECAB 458 (1951).

[5] *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984). *See also George W. Glavis*, 5 ECAB 363 (1953).

The coworker, however, stated that appellant approached him at the flat sorter "and told me that he was going home because he felt that [someone else] should be working on the flat sorter and he should be on the dock." From the coworker's account, appellant mentioned nothing about an injury.

Appellant's account also differs from the one given by the acting supervisor, who explained that he gave her a hard time when she asked him to "go prep on the 100." When she found him a short time later outside her office, he handed her a notification of absence and stated he was sick and going home. From the acting supervisor's statement, appellant mentioned nothing about injuring his right shoulder. The acting supervisor's account is consistent with the coworker's, as both indicated that appellant was upset about having to prep the 100. Appellant told both individuals that he thought he should be on the dock.

The inconsistencies also exist in the medical evidence. Appellant stated that when he saw Dr. Johnson, the orthopedic surgeon, on August 31, 2010, he told him that he had hurt his shoulder by lifting 50-pound tubs of mail from an APC. Dr. Johnson, however, reported that appellant denied any trauma. When he subsequently saw appellant on September 10, 2010, although appellant previously denied any trauma, he now reported that he had lifted 45- to 50-pound objects at the employing establishment on August 28, 2010 and since that time had neck and upper extremity pain. Appellant testified that he explained things to Dr. Johnson, and they got the matter straightened out, but if they did, Dr. Johnson did not confirm it. Dr. Johnson did not correct his reports.

This brings the number of people who are mistaken, according to appellant, to three: the coworker, the acting supervisor and the attending orthopedic surgeon. If appellant had actually injured his right shoulder handling heavy tubs of mail, and if he had told these three individuals about his injury, it would be reasonable to expect each of them, to confirm his account. None of them did and none of them have submitted supplemental statements explaining that they were mistaken in their original accounts of what happened.

As noted, an injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. In this case, appellant's statements about what happened and what he told people are not consistent with the rest of the evidence. Such inconsistencies cast doubt on whether he injured his right shoulder at the time, place and in the manner alleged. For this reason, the Board finds that appellant has not met his burden of proof to establish that he sustained an employment injury in the performance of duty on August 28, 2010, as alleged. The Board will affirm OWCP's December 21, 2011 decision.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury in the performance of duty on August 28, 2010, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 21, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 17, 2012
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