

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WANDA K. YOUNG and DEPARTMENT OF DEFENSE,
CAMP LEJEUNE DEPENDENTS SCHOOLS SITE OFFICE, Camp Lejeune, NC

*Docket No. 99-2437; Submitted on the Record;
Issued March 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty on February 19, 1999, as alleged.

On March 4, 1999 appellant, then a 38-year-old temporary school bus driver, filed a notice of traumatic injury (Form CA-1), alleging that she sustained injury to both legs and her left foot, stating the cause of injury as "Bus mix up and in a hurry to arrive at school on time." On the reverse side of the form, appellant's supervisor controverted appellant's claim stating that she disagreed with the employee's statement of the facts about the injury and that she had seen appellant the night of February 19, 1999 and appellant never mentioned an injury.

Accompanying appellant's claim were instructions and information from Urgent Care, Jacksonville, North Carolina, dated February 22, 1999, indicating a sprained knee and March 5, 1999, indicating injury to both legs; appellant's undated statement in which she stated, "Upon exiting the motor pool office and entering my bus I fell on the bus steps, therefore, sustaining my injuries, it was hard for me to operate this motor vehicle in a safe manner"; five witness statements; appellant's supervisor's March 10, 1999 statement; and an employing establishment March 9, 1999 memorandum for the record by an agency personnel management specialist.

By letter dated April 15, 1999, the Office of Workers' Compensation Programs requested additional medical evidence from appellant. By another letter dated April 15, 1999, the Office requested additional factual and medical information from appellant. No response was received from appellant.

By decision dated May 27, 1999, the Office found that the evidence of record failed to establish that the incident occurred as alleged or that appellant sustained an injury as a result of the alleged incident. Therefore, fact of injury was not established.

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty on February 19, 1999, as alleged.

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 limitations of the Act.² An individual seeking disability compensation must also establish that an injury was sustained at the time, place and in the manner alleged,³ that the injury was sustained while in the performance of duty,⁴ and that the disabling condition for which compensation is claimed was caused or aggravated by the individual's employment.⁵ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁶

In a traumatic injury case the employee must establish by the weight of reliable, probative and substantial evidence that the occurrence of an injury is in the performance of duty at the time, place and in the manner alleged and that the injury resulted from a specific event or incident.⁷ The Office cannot accept fact of injury if there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁸

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 an employee's statements in determining whether a *prima facie* case has been established.⁹ 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.¹⁰

In this case, appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged. Appellant's supervisor saw her on the night of the alleged

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Robert A. Gregory*, 40 ECAB 478 (1989).

⁴ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *Steven R. Piper*, 39 ECAB 312 (1987).

⁶ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁷ *See Joshua Fink*, 35 ECAB 822-24 (1984).

⁸ *Eric J. Koke*, 43 ECAB 638 (1992); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

⁹ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

¹⁰ *Robert A. Gregory*, *supra* note 3; *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

incident but she never mentioned an injury to her supervisor. While appellant's sister, also a bus driver, stated that on February 19, 1999 appellant told her she was hurt and to take her home, appellant saw at least five other bus drivers who she talked to before leaving work and never mentioned an injury and they saw no sign that she was injured. In particular one witness entered appellant's bus shortly after the alleged incident and rode with appellant for approximately two hours during which appellant never mentioned an incident, showed no sign she was injured and never told her that she was having difficulty operating the bus. Consequently, the Board finds that there are such inconsistencies in the evidence as to cast serious doubt on the validity of appellant's claim.

In addition, appellant failed to respond to the Office's request for additional factual and medical information. None of the evidence of record provided a physician's report containing a history of injury, a diagnosed condition nor a rationalized medical opinion based on an accurate factual history causally relating a diagnosed condition to the alleged February 19, 1999 incident.

In view of the inconsistencies in appellant's statements regarding how she sustained her injury and the lack of medical evidence which causally related a diagnosed condition to the alleged incident of February 19, 1999, the Board finds that there is insufficient evidence to establish that appellant sustained an injury to her legs, left foot in the performance of duty on February 19, 1999, as alleged.

The May 27, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
March 5, 2001

Michael J. Walsh
Chairman

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member