

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of GILBERT TOY and DEPARTMENT OF JUSTICE, IMMIGRATION  
& NATURALIZATION SERVICE, San Francisco, CA

*Docket No. 01-671; Submitted on the Record;  
Issued September 18, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury while in the performance of duty, causally related to factors of his federal employment.

On February 24, 2000 appellant, then a 47-year-old special agent, filed a claim alleging that on February 22, 2000 during physical training for a nonlethal weapons course he felt light headed, and that, after drinking some water, he passed out before sitting down on a chair. Appellant stopped work on February 22, 2000 and returned to duty on February 24, 2000.

By letter to the Office of Workers' Compensation Programs dated September 26, 2000, the employing establishment inquired about the status of appellant's case. The employing establishment noted that a records search did not produce appellant's original Form CA-1, and that it had requested that he submit a new form.

By letter dated October 5, 2000, the Office requested that appellant submit medical evidence including dates of examination and treatment, a history of injury, a detailed description of findings, laboratory results, a firm diagnosis and a physician's opinion supported by medical rationale discussing the causal relationship between appellant's condition and factors of his federal employment. Also by separate letter that date the Office requested that appellant describe in detail how the injury occurred and state its immediate effects, provide the names of witnesses, and explain any similar disability that he may have experienced.

By decision dated November 16, 2000, the Office rejected appellant's claim finding that no incident had been established and that no medical condition had been diagnosed.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty, causally related to factors of his federal employment.

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.<sup>1</sup> 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.<sup>2</sup>

In this case, appellant's supervisor did not controvert his claim, but instead indicated on the claim form that his knowledge of the incident agreed with appellant's statements. Therefore, the Office could reasonably accept that an incident occurred as alleged. However, appellant has failed to submit any rationalized medical evidence establishing that he sustained any type of injury or condition.

In fact, appellant submitted no medical evidence whatsoever in support of his claim. Appellant's burden of proof to establish his employment injury claim includes the necessity of furnishing an affirmative medical opinion from a physician who supports his or her conclusion with sound medical reasoning. Here, he has failed to establish *prima facie* that he sustained an injury causally related to factors of his federal employment.<sup>3</sup>

The November 16, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
September 18, 2001

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member

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<sup>1</sup> *John J. Carlone*, 41 ECAB 354 (1989). 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. *Carmen Dickerson*, 36 ECAB 409 (1985); *Joseph A. Fournier*, 35 ECAB 1175 (1984); see also *George W. Glavis*, 5 ECAB 363 (1953).

<sup>2</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. §10.5(a)(14).

<sup>3</sup> See *Neal C. Evins*, 48 ECAB 252 (1996); *Robert G. Morris*, 48 ECAB 238 (2996).