

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JEFFREY R. TAYLOR and U.S. POSTAL SERVICE,
INCOMING MAIL FACILITY, Linthicum, MD

*Docket No. 03-1612; Submitted on the Record;
Issued October 16, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has met his burden of proof to establish that he sustained an injury on September 12, 2002 in the performance of duty.

On September 13, 2002 appellant, then a 49-year-old technician, filed a claim alleging that he sustained an injury to his right shoulder on September 12, 2002, when he overloaded trays. He did not stop work. By decision dated October 30, 2002, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the evidence was insufficient to establish fact of injury.

The Board finds that appellant has not met his burden of proof to establish that he sustained an injury on September 12, 2002 in the performance of duty.

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 timely filed within the applicable time limitation period of the Act² and that an injury was sustained in the performance of duty.³ These are essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in

¹ 5 U.S.C. §§ 8101-8193.

² *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyett*, 41 ECAB 992 (1990).

conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁵ An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.⁶ An employee has not met his or her burden of proof of 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.⁷ 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, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.⁸ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.⁹

The Board finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the employment incident. In this case, appellant related that he sustained right shoulder pain on September 12, 2002 due to "overload[ed] trays" and performing a job that required an additional person. He sought medical treatment and stopped work on September 13, 2002. In a duty status report dated September 30, 2002, a physician diagnosed right shoulder impingement syndrome and noted appellant's complaints of pain in his shoulder "after heavy lifting at work."¹⁰ The record contains no contemporaneous factual evidence indicating that the claimed incident did not occur as alleged.¹¹ Thus, under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence. The Board, therefore, finds that the evidence of record is sufficient to establish that the September 12, 2002 incident occurred at the time, place and in the manner alleged.

The remaining issue is whether the medical evidence establishes that appellant sustained an injury causally related to the employment incident. In order to establish a causal relationship between the diagnosed condition and any disability there from the employment incident, appellant must submit rationalized medical opinion evidence, based on a complete factual and medical background supporting such causal relationship.¹²

⁵ See *Elaine Pendelton*, 40 ECAB 1142 (1989).

⁶ *Charles B. Ward*, 38 ECAB 667 (1989).

⁷ *Tia L. Love*, 40 ECAB 586 (1989).

⁸ *Merton J. Sills*, 39 ECAB 572 (1988).

⁹ *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

¹⁰ The portion of the form completed by the employing establishment indicates the history of injury as "pulling tub[s] off take away belt."

¹¹ See *Thelma Rogers*, 42 ECAB 866 (1991).

¹² *James Mack*, 43 ECAB 321 (1991).

In support of his claim, appellant submitted work status reports dated September 13, 2002, in which a physician found that he should be off work on September 13, 2002 and then work light duty for the next five days. He further submitted a disability certificate dated September 30, 2002, in which a physician indicated that he should lift no more than five pounds from September 30 to October 14, 2002. In these reports, however, the physician did not provide a history of injury, list findings on examination or relate appellant's restrictions to an employment incident on September 12, 2002. Thus, the reports are of little probative value.¹³

In a duty status report dated September 30, 2002, a physician diagnosed right shoulder impingement syndrome and listed work restrictions. In response to the question whether the history of injury provided by appellant corresponded to the history provided on the form by the employing establishment, the physician noted that appellant reported a "painful shoulder after [a] day [of] long lifting at work." The physician did not specifically relate the diagnosed condition of impingement syndrome to the September 12, 2002 employment incident or provide rationale for his conclusions. To be of probative value, the opinion of a physician supporting causal relationship must be one of reasonable medical certainty, supported with affirmative evidence, explained the medical rationale and based on a complete and accurate medical and factual background.¹⁴

An award of compensation may not be based on surmise, conjecture, speculation or upon appellant's own belief that there is causal relationship between his claimed condition and his employment.¹⁵ To establish causal relationship, he must submit a physician's report, in which the physician reviews the employment factors identified by appellant as causing his condition and, taking these factors into consideration as well as findings upon examination of appellant, state whether the employment injury caused or aggravated his diagnosed conditions and present medical rationale in support of his or her opinion. Appellant failed to submit such evidence in this case and, therefore, has failed to discharge his burden of proof.¹⁶

¹³ *Fereidoon Kharabi*, 52 ECAB 291 (2001) (generally, findings on examination are needed to justify a physician's opinion that an employee is disabled from work); *Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship).

¹⁴ *Connie Johns*, 44 ECAB 227 (1992).

¹⁵ *Donald W. Long*, 41 ECAB 142 (1989).

¹⁶ Following the Office's October 30, 2002 decision, appellant submitted additional evidence. As the Office did not review this evidence in reaching a final decision, the Board may not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated October 30, 2002 is affirmed.

Dated, Washington, DC
October 16, 2003

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

A. Peter Kanjorski
Alternate Member