

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

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**I.L., Appellant**

**and**

**DEPARTMENT OF VETERANS AFFAIRS,  
VETERANS ADMINISTRATION MEDICAL  
CENTER, Northport, NY, Employer**

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**Docket No. 08-858  
Issued: July 24, 2008**

*Appearances:*

*Thomas S. Harkins, Esq., for the appellant  
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 January 30, 2008 appellant, through her attorney, filed a timely appeal of the Office of Workers' Compensation Programs' November 7, 2007 merit decision finding that she had not established an injury on January 22, 2006, as alleged. Pursuant to 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 has met her burden of proof in establishing that she sustained an injury in the performance of duty on January 22, 2006, as alleged.

**FACTUAL HISTORY**

On January 26, 2006 appellant, then a 52-year-old nursing assistant, filed a traumatic injury claim alleging that she sustained a right shoulder injury on January 20, 2006 when attempting to transfer a patient from her bed to a chair. On the reverse of the form, appellant's supervisor, Elin Marie Antinori, controverted her claim. She asserted that appellant did not

report her injury for two days. Ms. Antinori further stated that appellant alleged that she had informed her of the injury, but she disputed this claim. She stated that appellant reported pain in her shoulder since January 14, 2006 and that she transferred a patient by herself when she already had pain in the right shoulder. Appellant first reported her injury on January 24, 2006 and on January 26, 2006 stated that she sustained injury on January 20, 2006.

Appellant submitted emergency room notes dated January 23, 2006 in which she reported right shoulder pain for two weeks. She stated that she was injured while at work while assisting a patient. The emergency room physician diagnosed acute right shoulder strain.

By letter dated February 21, 2006, the Office requested additional factual and medical information in support of appellant's claim. Dr. Scott Roteman, an internist, completed a note on February 16, 2006. He indicated that appellant had pain in her right shoulder which she attributed to moving a patient on January 19, 2006. Dr. Roteman submitted a duplicate of his February 16, 2006 typewritten note and originally provided a date of injury as January 20, 2006; however, this was altered in ink to reflect a date of January 22, 2006. In a note dated February 16, 2006, he indicated that appellant's injury occurred on January 19, 2006 when transferring a patient. Dr. Roteman diagnosed shoulder derangement, shoulder pain and shoulder myofascitis.

Appellant submitted a narrative statement on March 7, 2006. She asserted that her injury occurred on January 22, 2006 rather than January 20, 2006. Appellant stated that she reported her injury on January 22, 2006 by telephoning the night supervisor at 12:51 a.m. She delayed seeking medical treatment in hopes that her shoulder condition would resolve on its own before visiting the emergency room on January 23, 2006. Appellant submitted a copy of her telephone records establishing that she made a call on January 22, 2006 at 12.51 a.m.

On March 13, 2006 the employing establishment disputed appellant's claim. It advised that the night supervisor denied that appellant reported an injury and stated that the January 22, 2006 call pertained to a problem with her assignment.

By decision dated March 30, 2006, the Office denied appellant's claim finding that she had not submitted sufficient consistent factual evidence to establish that the incident occurred as alleged.

Appellant requested reconsideration on April 18, 2006. By decision dated July 24, 2006, the Office declined to reopen appellant's claim for consideration of the merits.

Appellant, through her attorney, requested reconsideration on March 16, 2007. She alleged that the employment incident occurred on January 22, 2006 while transferring a patient from the bed. Appellant stated that Ms. Antinori completed her claim form and provided an incorrect date of injury. She submitted a November 16, 2006 report from Dr. Roteman who stated that appellant reported on February 16, 2006 for evaluation of a shoulder injury sustained on January 22, 2006 while transporting a patient at work.

By decision dated November 7, 2007, the Office reviewed the merits of appellant's claim and found that there were too many factual discrepancies of record to establish that the employment incident occurred at the time, place and in the manner alleged.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

The Office's regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.<sup>3</sup> 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. 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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>4</sup>

## ANALYSIS

Appellant filed a claim for traumatic injury on January 26, 2006. On the claim form, her date of injury is listed as January 20, 2006. Appellant's supervisor, Ms. Antinori, disputed the claim on the reverse of the form contending that appellant had reported pain in her shoulder since January 14, 2006. Appellant alleged that Ms. Antinori completed her claim form on her behalf and entered an inaccurate date of injury. The Board notes that the claim form is signed by appellant.

The initial medical evidence submitted by appellant consisted of emergency room notes dated January 23, 2006 which reported a history of right shoulder pain for the prior two weeks. Dr. Roteman first examined appellant on February 16, 2006 and provided two copies of his treatment note; the first listing appellant's date of injury as January 19, 2006 and then as

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

<sup>3</sup> 20 C.F.R. § 10.5(ee).

<sup>4</sup> *Id.*

January 20, 2006, which was altered to January 22, 2006. In a note dated November 16, 2006, he listed appellant's history of injury as January 22, 2006.

On March 7, 2006 appellant stated that her injury occurred in the early morning of January 22, 2006 and asserted that she reported this injury to the night supervisor by telephone at 12:51 a.m. The night supervisor disputed the statement, stating that the telephone call concerned her duty assignment.

The Board finds that there are such inconsistencies in the evidence as to cast serious doubt on the validity of appellant's claim. The record contains five separate dates for the alleged employment incident; the emergency rooms notes stating two weeks before January 23, 2006 or approximately January 9, 2006, Ms. Antinori's notation of January 14, 2006, Dr. Roteman's original date of January 19, 2006, the claim form date of January 20, 2006 and appellant's later date of January 22, 2006.

Appellant has not submitted persuasive evidence to establish the alleged incident of January 22, 2006. She reported to the emergency room that the injury took place two weeks before she sought treatment on January 23, 2006, she reported to Dr. Roteman that the injury took place on January 19, 2006 and then apparently requested that he correct this date to reflect either January 20 or 22, 2006. Appellant has alleged that her January 22, 2006 telephone call to the night supervisor establishes that the injury occurred on that date, while the employing establishment has disputed the purpose of the call. While she has consistently reported to medical personnel that her injury occurred while moving a patient, her inability to provide a consistent date of injury casts serious doubt on the validity of her claim.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty. The factual evidence regarding her alleged incident is inconsistent and casts serious doubt upon the validity of her claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 7, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 24, 2008  
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