

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

\_\_\_\_\_  
**R.S., Appellant**

**and**

**DEPARTMENT OF THE ARMY, CORPS OF  
ENGINEERS, Tulsa, OK, Employer**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 07-1628  
Issued: November 15, 2007**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 30, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decisions dated August 1 and November 24, 2006 denying his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of this claim.

**ISSUE**

The issue is whether appellant established that he sustained an injury in the performance of duty on or about October 19, 2004, as alleged.

**FACTUAL HISTORY**

On December 5, 2005 appellant, then a 41-year-old civil engineer, filed a traumatic injury claim alleging that on October 25, 2004 he sustained an injury when, while inspecting a roof installed by a contractor, he fell in a swimming pool in the back yard and hit his rib cage on the edge of the pool. In completing the claim form, the employing establishment indicated that it was unable to verify the facts surrounding the alleged event. In support of his claim, appellant

filed discharge instructions from Sebastian River Medical Center dated October 24, 2004 indicating that he had been treated on that date by an emergency care provider. He also submitted a memorandum indicating that effective October 15, 2004 he was assigned to provide emergency assistance to the Emergency Operations Center, Readiness Branch as a result of Hurricane Frances.

By letter dated June 23, 2006, the Office requested further information. No further information was timely received.

By decision dated August 1, 2006, the Office denied appellant's claim for the reason that the evidence failed to establish that the October 25, 2004 incident occurred as alleged and that there was no medical evidence that provided a diagnosis which could be connected to the claimed event.

On September 11, 2006 appellant requested reconsideration. In an accompanying letter, he indicated that on October 19, 2004 he was on duty working as roofing quality assurance personnel for Hurricane Frances. In a statement dated October 24, 2004, appellant indicated that on October 19, 2004 he was walking backward on the edge of a swimming pool, that the swimming pool "cut out right behind me" and that he fell down. He noted that he tried to grab the edge of the pool while falling and that this was when he hit his rib. Appellant indicated that the pain in his rib continued so he decided to seek medical treatment and to report it to the appropriate authority. He also submitted a prescription dated October 24, 2004 and a copy of his time sheet indicating that he took sick leave for October 20, 2004.

By decision dated November 24, 2006, the Office reviewed appellant's case on the merits and modified the decision to reflect that his claim was denied on the grounds that he had not submitted sufficient evidence to support his contention that he suffered a traumatic injury while in the performance of duty on October 19, 2004.

### **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 an 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>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must

---

<sup>1</sup> 5 U.S.C. § 8122(a).

<sup>2</sup> *Id.*

submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.<sup>3</sup> Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup>

With respect to the first component of fact of injury, the employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>5</sup> An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and the circumstances and his subsequent course of action.<sup>6</sup> An employee has not met his 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.<sup>7</sup> 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>8</sup> 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.<sup>9</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to a specific condition of employment.<sup>10</sup> Neither the fact that a condition became apparent during a period of employment nor appellant's belief that the employment caused or aggravated his condition is sufficient to establish causal relationship.

### ANALYSIS

In the instant case, appellant alleged on his claim form that he sustained an injury in the performance of duty when he fell and hit his rib cage on the edge of the pool on October 25, 2004. He subsequently alleged that the injury occurred on October 19, 2004. The Board notes that appellant did not file a claim until December 5, 2005, over one year later. Appellant has submitted no witness statements in support of his claim and the employing establishment indicated that it could not confirm the circumstances surrounding his claim. The

---

<sup>3</sup> *John J. Carlone*, 41 ECAB 345 (1989).

<sup>4</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>5</sup> *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

<sup>6</sup> *Charles B. Ward*, 38 ECAB 667, 670 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

<sup>7</sup> *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>8</sup> *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

<sup>9</sup> *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

<sup>10</sup> *Katherine J. Friday*, 47 ECAB 591 (1996).

alleged dates of the traumatic incident are not consistent. On the claim form, appellant indicates that he was injured on October 25, 2004, the same date that he visited the emergency room. However, with his request for reconsideration, he listed the date of injury as October 19, 2004. The Board further notes that, if the date of injury was October 19, 2004, appellant worked a full day on that date, was off on October 20, 2004 for sick leave and then returned to work full time on October 21, 2004. There is no evidence that appellant informed his supervisor of his injury at the time of the injury. Accordingly, there are discrepancies with regard to how his injury occurred in that it was not promptly reported, there were no witness statements, there is confusion as to the date of injury and there is no indication that appellant stopped work on the date of the injury. The Board further notes that the medical evidence in the record does not indicate that appellant sought prompt medical treatment. Although there is a notation that appellant visited an emergency room on October 25, 2004, there is no indication as to the treatment he received or any description of appellant's alleged work injury. Due to these discrepancies in the evidence, the Board finds that appellant has not met his burden of proof to establish that the work incident occurred as alleged.<sup>11</sup>

As the Board finds that appellant has not met his burden of proof in establishing that the work incident occurred as alleged, it is not necessary to address the medical evidence.

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an injury in the performance of duty on or about October 19, 2004, as alleged.

---

<sup>11</sup> *D.B.*, 58 ECAB \_\_\_ (Docket No. 07-440, issued April 23, 2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated November 24 and August 1, 2006 are affirmed.<sup>12</sup>

Issued: November 15, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>12</sup> The Board notes that appellant submitted further evidence after the Office issued its November 24, 2006 decision. The Board may not consider evidence for the first time on appeal which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office and request reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.