

On November 4, 2004 appellant, then a 57-year-old mail handler, filed a traumatic injury claim alleging that he sustained a back strain on October 28, 2004 while loading mail. On the reverse of the form, appellant's supervisor, Derek A. Becker, stated that, on October 29, 2004, when appellant was asked if he had sustained an on-the-job injury, appellant denied such an

injury. Mr. Becker completed a statement on November 5, 2004 asserting that appellant worked on October 28, 2004, but that he left at 12:00 p.m. and did not mention an injury.

In support of his claim, appellant submitted a November 5, 2004 report from Dr. Mary Ann Hollman, a Board-certified family practitioner, diagnosing a sprain/strain of the back. She noted that appellant stated that he was loading mail when he hurt his back.

Alfred Powell, an acting supervisor, completed a statement on November 5, 2004 asserting that on October 29, 2004 appellant stated that his back was hurting and requested light duty. Mr. Powell asked if appellant was claiming an on-the-job injury and appellant allegedly replied, “no” and stated that his back began hurting the day before.

In a letter dated November 30, 2004, the Office requested additional factual and medical evidence in support of appellant’s claim. Appellant responded on December 20, 2004 and stated that he injured his back while loading boxes and sacks of mail onto a conveyor belt. He stated that the mail weighed between 5 and 70 pounds. He noted that he left work for a medical appointment and his back began hurting as soon as he tried to get into his car and sit down. Appellant stated: “I reported the injury the next morning as soon as I got to work. I told the acting supervisor Alfred Powell that I had hurt my back the day before while loading mail.” He noted that he was unable to schedule medical treatment until one week after the injury. Appellant also submitted additional reports from Dr. Hollman as well as physical therapy notes.

By decision dated May 5, 2005, the Office denied appellant’s claim finding that he had not established that the employment incident of lifting bags of mail occurred as alleged. The Office found that if appellant had sustained a work-related injury on October 28, 2004 he would have acknowledged this injury when directly asked by Mr. Powell on October 29, 2004 if he had sustained an on-the-job injury.

LEGAL PRECEDENT

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 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.²

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

¹ 5 U.S.C. §§ 8101-8193.

² *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004).

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 his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.³

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁴

ANALYSIS

Appellant filed a traumatic injury claim alleging that he injured his back lifting in the performance of duty on October 28, 2004. In his narrative statement, appellant reported that he did not realize that he had sustained a back injury until he left work on October 28, 2004 and entered his car. Appellant alleged that he reported this injury to Mr. Powell the following day, October 29, 2004. Mr. Powell disputed appellant's version of events, noting that appellant requested light-duty-work on October 29, 2004 due to back pain and had denied sustaining a work-related injury in response to the direct question of whether he was claiming an on-the job injury. Dr. Hollman, a Board-certified family practitioner, noted appellant's history of injury as loading mail and hurting his back on November 5, 2004 approximately a week earlier.

The Board finds that appellant has not met his burden of proof in establishing that the incident occurred as alleged. There is a dispute between appellant and Mr. Powell regarding whether appellant sustained the alleged traumatic incident on October 28, 2004 at the time, place and in the manner as alleged. Appellant attributed his back condition to his employment, while Mr. Powell asserted that appellant denied that his condition was due to an on-the-job injury. Appellant 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. It is his burden to submit witness statements or other corroborative evidence to substantiate his version of the events of October 28 and 29, 2004. Appellant has failed to submit such evidence and has therefore failed to meet his burden of proof in establishing that an injury occurred as alleged.

³ *Id.*

⁴ *Id.*

CONCLUSION

The Board finds that appellant did to submit sufficient reliable, probative and substantial evidence to establish that he sustained an employment incident on October 28, 2005 as alleged, due to the factual dispute in the record. Therefore, appellant has failed to meet his burden of proof and the Office properly denied his claim.

ORDER

IT IS HEREBY ORDERED THAT the May 5, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 13, 2005
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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