

On September 17, 2007 appellant, then a 45-year-old account clerk, filed a Form CA-2a, recurrence of disability, alleging that on July 10, 2007 she was pulling books down from overhead and experienced excruciating pain. She continued to work until July 12, 2007. Appellant reported that on April 2, 2002 she fell and injured her back and subsequently

underwent a discectomy and returned to work full duty. Her supervisor, Clovetta Craig, stated that, after appellant's April 2, 2002 injury, she returned to regular duty. She noted appellant's duties included analyzing account data and applying prescribed guidelines which required typing, and use of a telephone, fax, copier and printer. Appellant filed several CA-7 forms, claims for compensation, for the periods July 12 to September 5, 2007.

By letters dated October 4 and November 8, 2007, the Office requested additional information from appellant stating that the initial information submitted was insufficient to establish an injury on the above date. It asked appellant to submit a medical report from her treating physician containing a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed back injury.

In a letter dated November 6, 2007, the Office advised appellant that the factual evidence did not establish that she sustained a recurrence of disability. Rather, appellant's claim would be adjudicated as a new traumatic injury claim.

Appellant submitted reports from Decatur Pain and Rehabilitation where she was treated on July 11, 2007 for severe lumbalgia, left leg paresthesia and cervical, thoracic and lumbar spasms. She reported falling on April 2, 2002 and injuring her tailbone and back. Appellant underwent a discectomy on February 7, 2006. In reports dated July 11 to November 8, 2007, she reported no significant improvement in her condition and only temporary relief of her symptoms. On July 18, 2007 appellant was treated by Dr. Kimberly Story-Manning, a chiropractor, for injuries sustained as a result of a slip and fall at work on April 2, 2002. She reported falling at work on April 2, 2002 and landing on her buttocks and back. The physical examination revealed myospasm of the cervical spine, pain and tenderness upon palpation of the lumbar and thoracic spine and limited range of motion of the cervical spine. Dr. Story-Manning treated appellant conservatively with chiropractic adjustments and diagnosed lumbalgia, myospasm of the lumbosacral spine, lumbar sprain/strain, lateral leg paresthesia and nerve root impingement. She opined that appellant's condition was caused by the slip and fall accident on April 2, 2002.

Appellant was treated by Dr. Sanara D. Maryman, a Board-certified family practitioner, on September 6, 2007 for chronic back pain. Dr. Maryman noted that appellant injured her back in 2002 and underwent surgery in 2006. Appellant reported reinjuring her back on March 30, 2007 and experiencing increasing difficulty managing her work duties because her back pain was aggravated by walking, bending, sitting, lifting and twisting. Dr. Maryman opined that appellant was totally disabled from July 13, 2007.

In a decision dated December 18, 2007, the Office denied appellant's claim as the evidence was not sufficient to establish that she sustained injury on July 10, 2007. It found that the initial evidence of file was insufficient to establish that she experienced the claimed incident on July 10, 2007, as alleged, noting that the history of injury provided in the medical reports was different than that provided by appellant.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ has the burden of establishing the essential elements of the 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 or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.²

In order to determine whether an employee sustained an injury in the performance of her 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 conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.³ 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.⁴

Regarding the first component of fact of injury, an alleged work incident 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 statement must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. A consistent history of the injury, as reported on medical reports to the claimant's supervisor and on the notice of injury, can also be evidence of the occurrence of the incident. 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 cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantive evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. 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.⁵

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or

¹ 5 U.S.C. §§ 8101-8193.

² *Barbara R. Middleton*, 56 ECAB 634 (2005); *Caroline Thomas*, 51 ECAB 451 (2000).

³ *Id.*

⁴ *John J. Carlone*, 41 ECAB 354 (1989).

⁵ *Robert A. Gregory*, 40 ECAB 478 (1989).

incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁶

ANALYSIS

Appellant alleged that on July 10, 2007 she pulled books down from overhead and experienced excruciating back pain. However, she has not established the factual aspect of her claim. Appellant has not submitted sufficient evidence to establish that she experienced the implicated employment incident at the time, place and in the manner alleged.

On October 4 and November 8, 2007 the Office advised appellant that additional evidence was needed to establish her claim. Appellant submitted reports from Decatur Pain and Rehabilitation. She was treated from July 11 to November 8, 2007 for severe lumbalgia, left leg paresthesia and cervical, thoracic and lumbar spasms. However, these reports make no mention of any employment-related injury on July 10, 2007 or any history of pulling books on that date. Rather, appellant reported a work injury on April 2, 2002, in which she fell while holding books. There is no other contemporaneous medical evidence containing a history of appellant pulling books from overhead on July 10, 2007.

Dr. Story-Manning noted treating appellant for injuries sustained as a result of a slip and fall at work on April 2, 2002. Appellant did not mention the employment incident of July 10, 2007 or of pulling books. Dr. Story-Manning opined that her condition was attributable to a slip and fall accident on April 2, 2002. Other reports from Dr. Maryman dated September 6, 2007 noted appellant's treatment for chronic back pain which developed after reinjuring her back on March 30, 2007; however, the physician did not list any July 10, 2007 employment incident. No medical reports or other evidence submitted by appellant related a history of the book pulling incident on July 10, 2007.

The medical evidence submitted by appellant fails to reflect a history of the July 10, 2007 incident. Moreover, appellant filed her claim over two months following the alleged incident and she did not explain her delay in filing the claim. There was no witness to the alleged incident and she did not give any prior notice to her supervisor of the alleged injury prior to filing her claim on September 17, 2007. These circumstances of late notification, lack of confirmation and continuing to work without difficulty cast serious doubt on appellant's claim.

Appellant has not established that she experienced an employment incident on July 10, 2007. For these reasons, the Board finds that she has not established that the claimed incident occurred as alleged. Therefore, appellant has not met her burden of proof as she has not established that she experienced an employment incident at the time, place and in the manner alleged.

⁶ See *Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

CONCLUSION

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on July 10, 2007.

ORDER

IT IS HEREBY ORDERED THAT the December 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 6, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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