

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA W. PRUETT and DEPARTMENT OF VETERANS AFFAIRS,  
W.G. BILL HEFNER MEDICAL CENTER, Salisbury, NC

*Docket No. 03-2154; Submitted on the Record;  
Issued February 2, 2004*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant has established that she sustained an injury in the performance of duty.

On March 5, 2002 appellant, then a 54-year-old housekeeping aide, filed a traumatic injury claim alleging that on that date she experienced pain in her lower back and right leg due to being given extra duties and walking.

The Office of Workers' Compensation Programs received evidence covering the period March 5 through June 3, 2002 indicating that appellant received medical treatment for pain in her lower back and right leg, and the results of a functional capacity evaluation, a lumbar myelogram and a computerized tomography scan. The Office also received appellant's medical bills and medical evidence indicating that she was disabled for work for certain periods and her physical restrictions.

By letter dated July 11, 2002, the Office advised appellant that the evidence submitted was insufficient to establish her claim. The Office further advised appellant about the type of factual and medical evidence that was necessary to establish her claim and requested that she submit such evidence in support thereof.

In response, appellant submitted a narrative statement on July 22, 2002 describing the March 5, 2002 incident, listing the names of people who witnessed the incident, and indicating that she sought medical treatment the next day following the incident. Appellant resubmitted previously submitted medical evidence. She also submitted new medical evidence concerning her lower back, right leg and disability for work.

By decision dated January 10, 2003, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an injury in the performance of duty. The Office found the evidence of record insufficient to establish that the March 5, 2002 incident occurred as alleged inasmuch as there was a discrepancy as to how appellant was injured. The Office did not

address the issue of whether the medical evidence of record was sufficient to establish that appellant sustained an injury caused by an employment incident.

In a letter dated June 16, 2003, appellant requested reconsideration and again provided a description of the March 5, 2002 incident. Appellant resubmitted her narrative statement received by the Office on July 22, 2002. She also submitted a description of her job duties as a housekeeping aide and medical evidence indicating that she received treatment for pain in her lower back, right leg and right sciatica.

In an August 15, 2003 decision, the Office denied appellant's request for modification based on a merit review of the claim.

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty.

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 limitations 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.<sup>2</sup> 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>3</sup>

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 conjunction with one another. The first component to be established is that the employee actually experienced the employment incident or exposure, which is alleged to have occurred.<sup>4</sup> In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>5</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718 (1991).

<sup>4</sup> *See also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(a)(15), 10.5(a)(16) ("traumatic injury" and "occupational disease" defined).

identified factors.<sup>6</sup> The belief of the claimant that a condition was caused or aggravated by the employment is not sufficient to establish a causal relationship.<sup>7</sup>

Regarding the first component, the Office found the evidence of record insufficient to establish that appellant sustained an injury at the time, place and in the manner alleged. 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 as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and her subsequent course of action. 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 sufficient doubt on an employee's statements in determining whether 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 substantial 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.<sup>8</sup>

In this case, appellant did not provide sufficient evidence to establish the first component of fact of injury, that is, that the employment incident occurred at the time, place and in the manner alleged. Appellant originally asserted in her traumatic injury claim form that on March 5, 2002 she experienced pain in her lower back and right leg due to the performance of extra work duties and walking. In response to the Office's July 11, 2002 developmental letter, appellant provided a different account of how her injury occurred. She stated, "I was going home after work. I was going down three steps. The next thing I know I was getting up off the road in front of the building. I hit on my left wrist arm and hip. I fell about eight feet."

In her June 16, 2003 letter, requesting reconsideration of the Office's January 10, 2003 decision finding that she failed to establish fact of injury because the record was unclear as to how the March 5, 2002 incident occurred, appellant stated that due to extra walking and duties she had been given, her back and leg were hurting more than usual and as she was leaving work, she stumbled and fell down a short flight of stairs. She further stated that this was the incident that really caused her increased pain, but as she was feeling overworked and exhausted she put this on her traumatic injury claim form. She explained that the extra duties and exhaustion she experienced were incidental and contributed to her fall.

Appellant provided differing accounts of the March 5, 2002 incident. She stated that extra work duties and walking caused pain in her lower back and right leg. Appellant also stated that although the extra walking and duties she had been given caused her back and leg to hurt more than usual, her fall down the stairs really caused her increased pain.

Further, the medical evidence either does not provide a history that appellant's back and right leg pain were caused by a fall down the stairs at work or any history at all. The March 5,

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<sup>6</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>7</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>8</sup> *Merton J. Sills*, 39 ECAB 572 (1988); *Vint Renfro*, 6 ECAB 477 (1954).

2002 treatment notes of a physical therapist whose signature is illegible indicated that appellant experienced increased pain with her work activities, which required walking, bending and lifting. A March 6, 2002 duty status report of the same date revealed a history that on March 5, 2002 extra walking and duties irritated appellant's back and resulted in pain in her back and leg. Treatment notes of the same date revealed a history that appellant's workload had doubled and she developed significant low back pain and burning, and increased pain down her right leg. None of the above evidence indicated that appellant injured her back and right leg as a result of a fall at work on March 5, 2002.

A March 6, 2002 report from a physician whose signature is illegible and medical reports covering the period April 11 through June 30, 2002 from Dr. Mark A. Goodson, a Board-certified physiatrist and appellant's treating physician, regarding appellant's treatment for her back condition, radiological reports, reports and treatment notes from an orthopedic and sports medicine clinic and disability certificates covering the period March 29 through October 8, 2002 did not provide any history of injury occurring on March 5, 2002.

A March 13, 2002 attending physician's report from a physician whose signature is illegible provided a history that appellant fell on the sidewalk at work on August 1, 2001 and that she sustained a new injury on March 5, 2002. This report referred to a prior fall by appellant and did not specifically describe how appellant injured herself on March 5, 2002. An October 10, 2002 report of a physical therapist whose signature is illegible indicating that appellant fell at work in 1990 and that she recently fell in August 1991 also referred to a previous fall and did not describe the March 5, 2002 fall.

As there are inconsistencies in the history of injury, the Board finds that appellant did not establish that the claimed March 5, 2002 incident occurred as alleged.

The August 15 and January 10, 2003 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
February 2, 2004

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member