United States Department of Labor
Employees' Compensation Appeals Board

E.M., Appellant	)	
and	)	**Docket No. 07-1717**
	)	**Issued: December 28, 2007**
DEPARTMENT OF HOMELAND SECURITY, TRANSPORTATION SECURITY ADMINISTRATION, DALLAS-FORT WORTH AIRPORT, Coppell, TX, Employer	)	

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 June 13, 2007 appellant filed a timely appeal from the March 8, 2007 merit decision of the Office of Workers' Compensation Programs wherein the Office denied appellant's claim for compensation. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of this claim.

ISSUE

The issue is whether appellant established that she sustained an injury in the performance of duty on January 16, 2007.

FACTUAL HISTORY

On January 16, 2007 appellant, then a 26-year-old transportation security screener, filed a traumatic injury claim alleging that on that date at 16:28, "I was carrying some bins to the front of checkpoint when I heard a (pop) from my lower back and sharp pain down my leg. I

proceeded to put bins in place and when I bent my leg cramped and back hurt." She listed the nature of her injury as sharp needle pain in lower back and down left leg to ankle.

By letter dated January 29, 2007, the Office requested that appellant submit further information, including a description of what she was doing at the time the injury occurred and medical evidence in support of her claimed injury.

In response, appellant submitted records from her emergency room visit to Harris Methodist HEB on January 16, 2007. The hospital's intake form indicates that appellant was seen by emergency room personnel at 19:07. Appellant was treated by Dr. Jeff Peebles, an emergency room physician, who diagnosed appellant with a lumbar sprain and appellant was given prescriptions for Vicodin and Naproxen. Appellant was instructed, "Do not work for two days until released." Nursing notes and other forms were also submitted from the hospital. In one form the person recording the history indicated that appellant stated she slipped and twisted her back on the job. In another form during the same visit, a nurse indicated that appellant complained of low back pain, noting that appellant stated that she slipped and popped her back and got shooting pain to left leg. During the same visit, another person listed under initial assessment that appellant complained of low back pain as she slipped at work. On the same form, under additional findings, this same person indicated that appellant complained of lower back pain from falling at work.

In a Form CA-16 regarding authorization for examination and/or treatment completed on January 16, 2007, the date of the alleged incident, appellant indicated that she was carrying bins to the front of the checkpoint when she heard her back pop and felt sharp pain from lower back down left leg. This form was signed by an authorizing official at the employing establishment.

The record also contains three Texas Workers' Compensation Work Status Reports completed by Dr. Richard A. Montes, a chiropractor, on January 18, February 7 and 21, 2007. These reports list appellant's description of the incident as "slipped while bending, lifting, twisting, carrying stack of bins." Dr. Montes diagnosed lumbar sprain with disc path myalgia.

By memoranda dated February 13, 2007, the employing establishment controverted the claim. The employing establishment noted that there were discrepancies in the descriptions with regard to the alleged incidents. The employing establishment argued that, in her claim, appellant stated that she heard a pop in her lower back when carrying some bins to the front of a checkpoint but that Dr. Montes indicated that appellant injured herself while bending, lifting twisting and carrying a stack of bins. The employing establishment also noted that appellant sought care from a chiropractor despite the fact that no subluxation was diagnosed.

In a decision dated March 8, 2007, the Office denied appellant's claim, finding that there were significant discrepancies with regard to how the alleged incident occurred.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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.[2]

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

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.[5] 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.[6] An employee has not met his burden of proof in 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.[7] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficult 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.[8] 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.[9]

---

[1] 5 U.S.C. § 8122(a).

[2] *Id.*

[3] *John J. Carlone*, 41 ECAB 345 (1989).

[4] *Shirley A. Temple*, 48 ECAB 404 (1997).

[5] *William Sircovitch,* 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

[6] *Charles B. Ward*, 38 ECAB 667, 670 (1987); *Joseph Albert Fournier, Jr.,* 35 ECAB 1175, 1179 (1984).

[7] *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

[8] *Samuel J. Chiarella*, 38 ECAB 667, 670 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

[9] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

ANALYSIS

The Board finds that the evidence is sufficient to establish that appellant experienced the incident at the time, place and in the manner alleged. An employee's statement alleging that an injury occurred at a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10] In the instant case, appellant showed a consistent pattern of behavior with regard to the report of the alleged work incident. She alleged that an incident occurred at 16:28 on June 16, 2007 when she was carrying some bins to the front of a checkpoint and heard a pop in her lower back and sharp pain down her leg. Appellant completed her claim form on the same date as the alleged incident. She received an authorization for treatment form from the employing establishment on that date containing a history consistent with that on the claim form. Appellant was seen at a local emergency room at 19:07 on the day of the alleged incident. There was no late notification of injury, no evidence that appellant continued to work the day of the injury and she obtained medical treatment approximately two and a half hours after the incident occurred. The minor discrepancies in the accounts of how the incident occurred were made in reports by hospital personnel, not in direct statements by appellant. The hospital records indicate that appellant clearly stated that she was injured on the job on that date when she heard a pop in her back and experienced lower back pain while carrying bins. Dr. Montes indicated that appellant slipped while bending, lifting, twisting and carrying a stack of bins. His report, obtained two days following the incident, does not constitute strong or persuasive evidence sufficient to cast serious doubt on the validity of the claim.[11] This is especially true considering appellant's claim and treatment on the date of the alleged incident.

Accordingly, the Board finds that appellant met the first criterion for establishing fact of injury, *i.e.,* that she experienced the employment incident at the time, place and in the manner alleged. The case is remanded for the Office to consider whether the medical evidence establishes that the employment incident caused a personal injury.

CONCLUSION

This case is not in posture for decision.

---

[10] *Id.*

[11] *See Betty J. Smith*, 54 ECAB 174 (2002).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 8, 2007 is modified to reflect that appellant established that an employment incident occurred as alleged and this case is remanded for further action consistent with this opinion.

Issued: December 28, 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