



was sick and nauseous from medication.<sup>1</sup> The official supervisor's report reflected that appellant complained of nausea but made no mention of pain on the date of the alleged injury.

On July 24, 2006 the Office informed appellant that her claim was being treated as a claim for a new (traumatic) injury. Further informing her that the evidence submitted to date was insufficient to establish her claim, the Office advised her to provide additional documentation, including a firm diagnosis and a physician's opinion as to how her injury resulted in the diagnosed condition. The Office specifically asked appellant to provide a detailed description as to how the injury occurred, including the cause of the injury and statements from any witnesses or other documentation supporting her claim.

In a merit decision dated August 23, 2006, the Office denied appellant's claim on the grounds that she failed to establish the fact of injury, as she did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place and in the manner alleged or that the alleged incident caused her claimed condition.

On November 14, 2006 appellant's representative requested that appellant's claim (No. 252042219) be consolidated with her prior traumatic injury claim (No. 25-2063787), contending that her current condition was a recurrence of the original injury. Appellant submitted an appeal request form dated November 14, 2006, as well as a letter from her representative dated December 6, 2006, requesting reconsideration of the Office's August 23, 2006 decision.

The record reflects that appellant was treated at State of the Art Rehab by Dr. S. Roger Parthasarathy, a treating physician. In a report dated April 25, 2005, Dr. Parthasarathy provided diagnoses of lumbar postlaminectomy syndrome, lumbar radiculopathy and sacroiliitis, stating that her condition was caused by a May 26, 2004 work-related injury. In a report dated October 23, 2006, he reiterated his earlier diagnoses and stated that appellant was medically unfit for work, noting that her primary problem was pain, numbness and weakness in her lower back. Dr. Parthasarathy indicated that appellant "had been working six hours per day performing casing work in the mail facility and delivering mail prior to her exacerbation." On December 4, 2006 he stated that appellant continued to experience back and left hip pain due to some lateral hip tendinitis from overuse, and as a residual from her prior injury and subsequent surgery. Noting that appellant had excruciating pain in her back, hip and leg, Dr. Parthasarathy opined that she was disabled from work at that time. In a January 5, 2007 follow-up report, he repeated his diagnoses and opined that appellant was unable to work, as she was in excruciating pain due to her inability to tolerate her medications. An accompanying duty status report reflected that appellant was not able to work and that the date of injury was May 26, 2004. In a report dated February 23, 2007, Dr. Parthasarathy related appellant's statement that her problems began with a May 26, 2004 work-related injury, when she stepped into a hole while removing a mail tray. Following a September 26, 2004 surgery, she noted increased numbness and tingling in her leg and began to experience severe low back pain.

---

<sup>1</sup> Appellant indicated that she had returned to modified duty in November 2004, following a May 26, 2004 work-related injury.

By decision dated May 9, 2007, the Office denied modification of its August 23, 2006 decision, finding that appellant had failed to establish the fact of injury.<sup>2</sup>

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>3</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>5</sup>

An employee seer 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.<sup>6</sup> When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.<sup>7</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial

---

<sup>2</sup> The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its May 9, 2007 decision. The Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c). See also *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to the Office, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

<sup>3</sup> 5 U.S.C. §§ 8101 *et seq.*

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); see also *Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>6</sup> *Robert Broome*, 55 ECAB 339 (2004); see also *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Betty J. Smith*, 54 ECAB 174 (2002); see also *Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). See 20 C.F.R. § 10.5(q), (ee).

doubt on a claimant's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>8</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 specific conditions of employment.<sup>9</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment, nor the belief that the disease or condition was caused or aggravated by employment factors or incidents, is sufficient to establish a causal relationship.<sup>10</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a traumatic injury to her back on December 2, 2005.

Appellant alleged that, while putting up a tray of mail in preparation for her route on December 2, 2005, she "pulled" her back and experienced pain. The Office properly developed appellant's claim as a traumatic injury claim.<sup>12</sup> Appellant gave no detailed account of the injury. She presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor has she alleged that she experienced a specific event, incident or exposure

---

<sup>8</sup> See *Betty J. Smith*, *supra* note 7.

<sup>9</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>11</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>12</sup> See 20 C.F.R. § 10.5(x), which provides in pertinent part: "Recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness." Appellant's representative argues that appellant's current condition is not a result of a new injury, but rather is a recurrence of her May 26, 2004 injury. However, the instant claim relates to a specific intervening incident that allegedly occurred on December 2, 2005, which, if proven, would constitute a traumatic injury. See 20 C.F.R. § 10.5(ee), which provides in pertinent part: "Traumatic injury means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." Appellant may file a new recurrence claim, together with supporting medical evidence, alleging an inability to work due to a spontaneous change in her medical condition.

at a definite time, place and manner.<sup>13</sup> No evidence was presented addressing the causal relationship between the alleged incident and a diagnosed condition.

Appellant's recitation of the facts does not support her allegation that a specific event occurred which caused an injury.<sup>14</sup> In fact, there are inconsistencies in the evidence which cast serious doubt on the validity of her claim. Appellant stated that she "pulled" her back and was in "horrible" pain on December 2, 2005. However, the official supervisor's report reflected that appellant complained of nausea but made no mention of pain on the date of the alleged injury. Appellant has not presented any probative evidence, such as witness statements, to corroborate her claim that she injured her back on that date.

The contemporaneous medical evidence of record, which consists of reports from appellant's treating physician, does not support appellant's allegation that her condition resulted from the claimed December 2, 2005 work incident. The record reflects that Dr. Parthasarathy treated appellant for lumbar postlaminectomy syndrome, lumbar radiculopathy and sacroiliitis. However, his reports consistently indicated that her condition began with a May 26, 2004 work-related injury, when she stepped into a hole while moving a mail tray. On October 23, 2006 Dr. Parthasarathy stated that appellant was medically unfit for work, noting that her primary problem was pain, numbness and weakness in her lower back. He indicated that appellant was "working six hours per day performing casing work in the mail facility and delivering mail prior to her exacerbation." Although his reference to an "exacerbation" suggests a traumatic event, Dr. Parthasarathy did not provide any details to establish that appellant experienced an employment incident which caused an injury on December 2, 2005. On December 4, 2006 he stated that appellant continued to experience back and left hip pain due to some lateral hip tendinitis from overuse, and as a residual from her prior injury and subsequent surgery. On February 23, 2007 he related appellant's statement that her problems began with a May 26, 2004 work-related injury, when she stepped into a hole while removing a mail tray and that, following a September 26, 2004 surgery, she noted increased numbness and tingling in her leg and began to experience severe low back pain. The medical evidence of record reflects that appellant did not clearly report to her physician that she felt her claimed condition was due to a specific and identifiable employment incident that occurred on December 2, 2005.

In *Paul Foster*,<sup>15</sup> an employee filed a claim alleging that he sustained a knee injury while walking his mail route. However, because the employee's allegations were vague and did not clearly identify the aspect of his employment which he believed caused the claimed condition, or how he twisted his knee while performing his duties the date in question, the Board held that he had not met his burden of proof to establish that he sustained an injury in the performance of duty. Similarly, in the instant case, appellant's allegations are vague and speculative, and they do not relate with specificity the cause of the injury (*e.g.*, the fact that she reached overhead or lifted a tray from the ground from a standing position), or the exact and immediate consequence of the injury (*e.g.*, the fact that she fell, stumbled, had to sit down or dropped the tray of mail).

---

<sup>13</sup> See *Betty J. Smith*, *supra* note 7; see also *Tracey P. Spillane*, *supra* note 7.

<sup>14</sup> See *Dennis M. Mascarena*, *supra* note 10.

<sup>15</sup> 56 ECAB \_\_\_\_ (Docket No. 04-1943, issued December 21, 2004).

Therefore, appellant has not met her burden of proof to establish that she sustained an injury in the performance of duty, and it is not necessary to discuss the probative value of the medical reports.<sup>16</sup>

**CONCLUSION**

Appellant has not met her burden of proof to establish that she sustained a traumatic injury to her back in the performance of duty on December 2, 2005.

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 9, 2007 and August 23, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: December 27, 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>16</sup> *Id.*