

On May 26, 2009 the Office asked appellant for additional information, including an explanation of why she did not report the injury to her supervisor until three months after the incident, whether she continued to perform her regular job, a response to the employing establishment's statement that she initially stated that she had no recollection of any incident causing the back pain, a detailed description of the February 22, 2009 incident and medical evidence containing a medical history, diagnosis and a rationalized explanation as to how the diagnosed condition was causally related to the February 22, 2009 incident.

In notes dated February 23, 2009, Dr. Deborah A. Peltier, a Board-certified internist, stated that appellant had experienced low back pain since the afternoon of February 22, 2009 but had no recollection of any specific activity or movement that might have caused the pain. There was a history of low back pain. Dr. Peltier made a tentative diagnosis of L4-5 nerve root impingement. In an undated statement, Michael L. Puckett, an employing establishment nurse, stated that appellant was seen on February 23, 2009 for low back pain which began the afternoon of February 22, 2009. Appellant did not recall any specific activity or unusual exertion during her shift that might have triggered the pain. She advised that it was not uncommon for her to have frequent low back pain unrelated to work activity. In May 2009, when appellant filed her claim and attributed her back condition to helping to move a patient, Mr. Puckett asked her why she did not provide this information on February 23, 2009. Appellant responded "Well, I just assumed you would know what happened."

By decision dated July 2, 2009, the Office denied appellant's claim on the grounds that the evidence did not establish that she sustained an injury on February 22, 2009 while in the performance of duty.

On July 24, 2009 appellant requested a hearing that was held on November 10, 2009. In a June 26, 2009 statement, she attributed her back condition on February 22, 2009 to moving a patient during an emergency. At the hearing appellant testified that her back pain began after she took medications from a drawer. A May 19, 2009 magnetic resonance imaging (MRI) scan report noted a history of advanced degenerative changes at L4-5 and L5-S1. There were no new abnormalities. On May 29, 2009 David K. Towns, M.D., described appellant's lumbar epidural steroid injection on that date. On June 9, 2009 Dr. Towns noted that appellant had a history of low back pain radiating into the groin bilaterally. On June 23, 2009 William Abdu, M.D., noted that appellant had experienced back symptoms on and off for years. On February 24 and March 13, 2009 Carol Williams-Suich, a family nurse practitioner, saw appellant for back pain. She noted that there was a history of a herniated disc and intermittent back pain. On February 5, 2009 Ms. Williams-Suich saw appellant for a recent episode of back pain after walking a patient whose legs gave out. In an undated report sent to appellant's attorney and received by the Office on December 28, 2009, she noted that she saw appellant for low back pain and other symptoms. Appellant first noted her symptoms after she assisted in a code (obtaining necessary equipment during a patient emergency). Ms. Williams-Suich did not give the date of this incident.

By decision dated January 20, 2010, an Office hearing representative affirmed the July 2, 2009 decision.¹

LEGAL PRECEDENT

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must 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 he or she actually experienced the employment incident at the time, place and in the manner alleged.² Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.³ An employee may establish that the employment incident occurred as alleged but fail to show that his or her disability or condition relates to the employment incident.

To establish a causal relationship between an employee's condition and any disability claimed and the employment event or incident, he or she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, 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

The Board finds that the evidence is insufficient to establish that appellant experienced the employment incident at the time, place and in the manner alleged. 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. The employee has not met her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁵ In determining whether a *prima facie* case has been established, such circumstances as late

¹ Subsequent to the January 20, 2010 Office decision, additional evidence was submitted to the file. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

² *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006); *Edward C. Lawrence*, 19 ECAB 442, 445 (1968).

³ *T.H.*, 59 ECAB 388 (2008); *John J. Carlone*, 41 ECAB 354, 356-57 (1989).

⁴ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁵ *Linda S. Christian*, 46 ECAB 598 (1995).

notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on a claimant's statements.⁶

In this case, appellant alleged in May 2009 that on February 22, 2009 she experienced low back pain at work after helping to move a patient. Yet on February 23, 2009, one day after the alleged incident, Dr. Peltier stated that appellant had no recollection of any specific activity or movement that might have caused the pain. This is a significant inconsistency that casts serious doubt on her claim.

Mr. Puckett stated that appellant was seen on February 23, 2009 for low back pain which began the afternoon of February 22, 2009. Appellant did not recall any specific activity or unusual exertion during her shift that might have triggered the pain and that it was not uncommon for her to have frequent low back pain unrelated to work activity. The fact that on February 23, 2009 appellant could not remember that her back pain began the day before when she helped move a patient, but could recall on May 21, 2009 that it was the act of moving a patient on February 22, 2009 that caused her back pain is another serious inconsistency casting doubt on the validity of appellant's claim.

On February 24 and March 13, 2009 Ms. Williams-Suich saw appellant for back pain. She noted that there was a history of a herniated disc and intermittent back pain. On February 5, 2009 she saw appellant for a recent episode of back pain after walking a patient whose legs gave out. In an undated report, received by the Office on December 28, 2009, Ms. Williams-Suich noted that appellant first noted the symptoms after she responded to a code at work. There was no mention of the February 22, 2009 incident in the reports of Ms. Williams-Suich.

A May 19, 2009 MRI scan report noted a history of advanced degenerative changes at L4-5 and L5-S1. There were no new abnormalities. This report does not indicate any lumbar back changes related to an injury on February 22, 2009.

On May 29, 2009 Dr. Towns described appellant's lumbar epidural steroid injection for low back pain with radiculopathy on that date. He did not provide a medical history. On June 9, 2009 Dr. Towns noted that appellant had a history of low back pain radiating into the groin bilaterally. He also did not mention the February 22, 2009 incident.

On June 23, 2009 Dr. Abdu noted that appellant had experienced back symptoms on and off for years. He did not mention an injury on February 22, 2009.

In a June 26, 2009 statement, appellant attributed her back condition on February 22, 2009 to moving a patient during an emergency. At the hearing, she testified that her back pain began after she took medications from a drawer.

The Board finds that the inconsistencies in the factual and medical evidence cast serious doubt as to whether the February 22, 2009 incident occurred at the time, place and in the manner alleged.

⁶ *Id.*

The second component of fact of injury is whether appellant sustained a medical condition as a result of the alleged incident. Since she failed to establish the first component of fact of injury, it is not necessary to address the second component. However, the Board notes that there is no report of record from a physician giving a detailed history of the February 22, 2009 alleged incident and appellant's other back injuries and a rationalized opinion on the causal relationship between her back condition and the February 22, 2009 incident.

Appellant failed to meet her burden of proof to establish that she sustained an injury on February 22, 2009 while in the performance of duty.

CONCLUSION

The Board finds that appellant failed to establish that she sustained a traumatic injury on February 22, 2009 while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 20, 2010 is affirmed.

Issued: December 7, 2010
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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