

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of DORA J. THOMPSON and DEPARTMENT OF VETERANS AFFAIRS,  
MEDICAL CENTER, North Little Rock, Ark.

*Docket No. 96-873; Submitted on the Record;  
Issued February 2, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty.

The Board has duly reviewed the case on appeal and finds that appellant has failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty.

Appellant filed a claim on March 6, 1995, alleging on February 22, 1995 she injured her lower back, while lifting and carrying books. The Office of Workers' Compensation Programs denied appellant's claim on July 9, 1995 finding that she failed to establish fact of injury. Appellant requested reconsideration on November 8, 1995 and by decision dated November 20, 1995, the Office denied modification of its July 9, 1995 decision.<sup>1</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 which is alleged to have occurred.<sup>2</sup> In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>3</sup> 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

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<sup>1</sup> Following the Office's November 20, 1995 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review it for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *John J. Carlone*, 41 ECAB 354 (1989).

circumstances and her subsequent course of action.<sup>4</sup> 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.<sup>5</sup>

In this case, appellant reported on her claim form that she injured her back lifting books on February 22, 1995. Appellant continued to work and first reported her condition to the employing establishment on February 28, 1995. Appellant submitted medical reports listing several different dates of injury. On February 27, 1995 a physician noted that appellant sustained an on-the-job injury on February 15, 1995 lifting books two at a time. The same physician completed a form report on February 27, 1995 which listed appellant's date of injury as February 22, 1995. The physician checked "yes" to indicate that the history given by appellant corresponded to that supplied by the form. In a report dated June 5, 1995, Dr. Andrew T. Brooks, a Board-certified orthopedic surgeon, noted that appellant experienced an onset of back pain while lifting books on February 27, 1995.

Appellant submitted an additional narrative statement to the Office on July 13, 1995. She stated on February 22, 1995 her supervisor requested that she add files to books weighing five to six pounds each. She carried these books two at a time. Appellant stated for two days she worked through the files. However, appellant also noted that she experienced back pain upon beginning her task on Friday, February 22, 1995. Appellant returned to work on Monday, February 25, 1995 and reported her injury to the employing establishment health services on February 27, 1995. Appellant stated that she fell at work on two occasions after the February 22, 1995 injury, but failed to describe any injuries as a result of these falls.

In this case, appellant initially alleged that on February 22, 1995 she injured her back lifting books. Appellant submitted reports from physicians listing her date of injury as February 15 and 27, 1995. Furthermore, appellant's supervisor noted that appellant did not appear to have any difficulty walking February 22 through 24, 1995 and reported for work as usual on February 28, 1995 at 8:00 a.m. and did not mention any pain until 11:00 a.m. Finally, appellant mentioned two other incidents occurring at work after February 22, 1995.

Appellant has failed to present an uncontroverted statement, of an employment incident and failed to present a consistent history of the date of injury as reported on medical reports and on the notice of injury. In the instant case, there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>6</sup> Appellant, therefore, has failed to meet her burden of proof in establishing that the employment incident occurred as alleged and has failed to establish fact of injury. The Office properly denied this claim.

The decisions of the Office of Workers' Compensation Programs dated November 20 and July 9, 1995 are hereby affirmed.

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<sup>4</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>5</sup> *Id.* at 255-56.

<sup>6</sup> *George V. Lambert*, 44 ECAB 870, 876 (1993).

Dated, Washington, D.C.  
February 2, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member