

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**PAULINE G. SLIVA, Appellant**

**and**

**DEPARTMENT OF AGRICULTURE, FARM  
SERVICES AGENCY, Fredericksburg, TX,  
Employer**

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**Docket No. 04-467  
Issued: April 9, 2004**

*Appearances:*  
*Pauline G. Sliva, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

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

**JURISDICTION**

On December 15, 2003 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 4, 2003, in which the Office denied her claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUE**

The issue on appeal is whether appellant established that she sustained an injury in the performance of duty on June 3, 2003.

**FACTUAL HISTORY**

On June 6, 2003 appellant, a 72-year-old program technician, filed a traumatic injury claim alleging that on June 3, 2003 she sustained a lower back strain due to repetitive bending,

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<sup>1</sup> Appellant submitted new medical evidence with her appeal, which the Board is precluded from considering for the first time on appeal. 20 C.F.R. § 501.2(c).

pulling and lifting. She stated that there was no particular time when it happened, it just got progressively worse as the day went on. Appellant stopped work on June 3, 2003 and returned on June 9, 2003. The employing establishment indicated that there were no witnesses to the alleged injury.

In support of her claim, appellant submitted a return to work slip prepared by Dr. Alice D. Cox, a Board-certified family practitioner, dated June 4, 2003, which advised that she could return to work on June 9, 2003.

By letter dated October 1, 2003, the Office asked appellant to submit additional information including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed injuries.

In response to the Office's request, appellant submitted a treatment note from Dr. Cox dated June 4, 2003. Appellant reported that she hurt her back the previous day while at work. She reportedly stated that she thought she hurt herself when she was pulling on some things from under the counter. Dr. Cox also noted that appellant advised that she first had trouble with her back 15 years ago and since then she had occasional intermittent episodes of flare ups. The physical examination revealed spasm bilaterally of the upper lumbar area. Dr. Cox diagnosed acute lumbar strain and advised that appellant was to remain off work until June 9, 2003.

In a decision dated November 4, 2003, the Office denied appellant's claim on the grounds that she failed to establish that she sustained an injury as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</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 filed within the applicable time limitation 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.<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 which is alleged to have occurred.<sup>4</sup> The second

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>5</sup>

### **ANALYSIS**

In this case, the Office found that the evidence of file supported that the claimed events occurred. However, the Office denied the claim because there was no medical evidence that provided a diagnosis which could be connected to the employment events. Dr. Cox's June 4, 2003 return to work notification did not include a diagnosis or any other useful information that would aid appellant in meeting her burden and the Office advised appellant accordingly on October 1, 2003. In response to its request for additional medical information, the Office received Dr. Cox's June 4, 2003 treatment notes. While her treatment notes provide some additional information relevant to the issue at hand, Dr. Cox did not specifically attribute appellant's acute lumbar strain to her reported "pulling on some things from under the counter" at work the prior day. Although she reported a history of injury and diagnosed acute lumbar strain, she did not state that appellant's condition was related to her employment. Consequently, Dr. Cox's opinion is insufficient to establish that appellant sustained an injury in the performance of duty on June 3, 2003.<sup>6</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on June 3, 2003.

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<sup>5</sup> *Id.*

<sup>6</sup> *See Calvin E. King*, 51 ECAB 394 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 4, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 9, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member