



trash into a dumpster, he sustained an injury to his back and leg, specifically, swelling of the “back nerve muscle” and “hamstring pulls.” Appellant stopped work on January 27, 2003 and returned on February 17, 2003.

Appellant’s supervisor indicated that appellant worked overtime on January 23 and 24, 2003. The supervisor stated that appellant requested sick leave on January 27, 2003 and stated that his leg was bothering him but did not mention a workplace injury. The supervisor further asserted that, in a medical report dated January 30, 2003, appellant indicated that he did not know what caused his pain but that he “might have” lifted a heavy object at work.

Evidence of record includes a medical report dated January 30, 2003, prepared by Dr. Dwight C. Herbert, a Board-certified family practitioner, who reported that appellant presented with complaints of right low back and leg pain. He diagnosed low back and right hip pain. Dr. Herbert reported that appellant stated that he was “not sure what caused the pain but he may have lifted heavy object at work.”

By letter dated March 19, 2003, the Office advised appellant that the information submitted in his claim was not sufficient to determine whether he was eligible for compensation benefits under the Federal Employees’ Compensation Act.<sup>1</sup> Further, the Office advised appellant of the additional medical and factual evidence needed to support his claim. The Office directed appellant to provide a comprehensive medical report indicating a firm diagnosis of appellant’s condition and a physician’s opinion, with medical reasons for such opinion, as to how appellant’s work history caused or aggravated the claimed injury. In particular, appellant was directed to describe how the injury occurred and why he did not sooner seek medical attention.

In response to the Office’s letter, appellant alleged that he was walking “4- to 40-pound bags of trash one by one up metal steps to be thrown into A-81 dumpster.” Appellant stated that he “had trouble with one bag that started slipping from his grip” and “used his knees and body to keep the bag from falling until” he “could get another grip to raise bag high enough to push over top of dumpster.” He stated that his hips and legs felt stiff for a while, but once the stiff feeling went away, he continued his workday.

Appellant submitted an emergency room report, dated January 26, 2003, prepared by Dr. John Henri Van Der Leuv, a specialist in emergency medicine, who noted treating appellant for pain in his right leg and thigh. He noted findings upon physical examination of limited range of motion, especially at the hip area and a tender sciatic nerve, and diagnosed sciatica. Dr. Van Der Leuv submitted a form advising that appellant would be able to return to work on January 28, 2003. Appellant also forwarded an x-ray report, also dated January 26, 2003, which revealed mild degenerative disc disease at L4-5. Also submitted were work excuse forms from Dr. Herbert dated January 30 to March 14, 2003, which advised that appellant could not work from January 27 through February 17, 2003. In his report of March 14, 2003, Dr. Herbert diagnosed low back pain and right hip pain. In an attending physician’s report also dated March 14, 2003, Dr. Herbert diagnosed low back and hip pain and indicated with a check mark

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

that appellant's condition was not caused or aggravated by an employment activity. He advised that appellant was totally disabled from January 27 to February 17, 2003 and could resume regular work on February 18, 2003.

Additionally, appellant forwarded a physical therapy initial evaluation and plan of care report, dated February 10, 2003, in which Clarence E. Tucker, Jr., M.P.T., noted that appellant complained of intermittent right gluteal and lumbosacral pain in the mornings and evenings, constant right lateral thigh and leg pain and intermittent anterior thigh pain on the right lower extremity and a history that these injuries were sustained in a work-related incident on January 23, 2003, in which appellant stated that he injured his back while emptying a trash can at work. Mr. Tucker diagnosed appellant's condition as low back pain, right hip and lower extremity pain. Dr. Herbert cosigned this report.

By decision dated April 19, 2003, the Office denied appellant's claim. The Office found that the evidence of record failed to establish that the claimed incident occurred as alleged. Additionally, the Office found that the medical evidence submitted did not provide a diagnosis, which could be attributed to the claimed incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Act 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 occupational disease.<sup>2</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>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 circumstances and her subsequent course of action. 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. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether she has established a *prima*

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<sup>2</sup> *Gabe Brooks*, 51 ECAB 184 (1999); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, *supra* note 2.

*facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantive evidence. An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. 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.<sup>4</sup> The second 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>

Rationalized medical opinion evidence is medical evidence, which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>6</sup>

### ANALYSIS

In this case, appellant alleged that he sustained a low back and leg injury as a result of lifting trash into a dumpster. The Board initially notes that the Office found that the January 23, 2003, lifting incident did not occur as alleged. However, appellant has provided a consistent history of injury as indicated on the Form CA-1 and subsequently reported in medical reports that he was lifting trash into a dumpster and injured his back. Specifically, appellant indicated in statements to Mr. Tucker, a physical therapist, and Dr. Herbert that he injured his back while emptying a trash can at work. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and thus has established that he experienced the employment incident on January 23, 2003.

The Board finds, however, that the evidence of record is sufficient to establish that the lifting incident occurred but that the medical evidence is insufficient to establish that appellant sustained a low back and leg injury on January 23, 2003 causally related to his employment duties. The medical records submitted most contemporaneously with the date of the alleged

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<sup>4</sup> *Id.*

<sup>5</sup> See 20 C.F.R. § 10.115; *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>6</sup> *James Mack*, 43 ECAB 321 (1991).

injury,<sup>7</sup> specifically, the notes from Drs. Van Der Leuv and Herbert dated January 26 and 30, 2003, diagnosed low back pain, right hip pain and sciatica. However, neither report mentioned that appellant's condition was work related. Medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value.<sup>8</sup> Although, Dr. Herbert indicated in his report of January 30, 2003 that appellant stated that he was "not sure what caused the pain but he may have lifted heavy object at work," the physician appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether this or any other factors of employment caused appellant's condition. To the extent that the physician is providing his own opinion, he does not provide any reasoning or rationale explaining the causal relationship between appellant's condition and his employment duties.<sup>9</sup>

Other reports from Dr. Herbert dated February 4 to March 14, 2003, diagnosed low back pain and right hip pain. However, the physician does not provide a rationalized opinion regarding the causal relationship between appellant's low back and leg injury and the factors of employment believed to have caused or contributed to such condition.<sup>10</sup> Rather, in an attending physician's report dated March 14, 2003, Dr. Herbert specifically advised that appellant's condition was not caused or aggravated by an employment activity.

### **CONCLUSION**

The Board, therefore, finds that, as none of the medical reports provided an opinion that appellant developed an employment-related injury in the performance of duty, appellant failed to meet his burden of proof.<sup>11</sup>

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<sup>7</sup> The Board has consistently held that contemporaneous evidence is entitled to greater probative value than later evidence; see *Eileen R. Kates*, 46 ECAB 573 (1995).

<sup>8</sup> *Michael E. Smith*, *supra* note 5.

<sup>9</sup> See *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>10</sup> *Id.*

<sup>11</sup> See *Calvin E. King*, 51 ECAB 394 (2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 19, 2003 be affirmed.

Issued: March 12, 2004  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member