



muscle strain. Regarding the history of injury, she noted that: “[he] lifts weights and lifted two days ago.” The record also includes a July 28, 2003 hospital registration sheet from Mt. Auburn Hospital, a July 28, 2003 Mt. Auburn Hospital walk-in medical report and a July 27, 2003 x-ray interpretation by Dr. Madeline S. Crivello, a Board-certified internist.

By letter dated August 11, 2003, the Office notified 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> Appellant was advised to describe how the injury occurred.

In an August 26, 2003 report, Dr. Gaines noted that she had seen and treated appellant on July 28, 2003 for a left-sided muscle strain. She checked the box indicating that the condition was work related and released appellant to work with restrictions of no lifting more than 10 pounds for a week.

In an undated letter addressed to Dr. Gaines and received by the Office on September 17, 2003 appellant identified himself as the patient who saw Dr. Gaines on July 28, 2003 and was diagnosed with a left-side strained muscle. He stated that the injury occurred while lifting a heavy sack of mail and requested Dr. Gaines to “write a definitive diagnosis that lifting a heavy sack of mail was probably to (sic) cause for the strain.”

By decision dated September 18, 2003, the Office denied appellant’s claim. The Office noted that appellant submitted numerous medical reports from Mt. Auburn Hospital but found that appellant failed to provide factual evidence explaining how his left arm was injured or sufficient medical opinion evidence to substantiate his claim.

### **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.”<sup>2</sup> 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>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

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Louis T. Blair, Jr.*, 54 ECAB \_\_\_\_ (Docket No. 02-2289, issued January 16, 2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Janice Guillemette*, 54 ECAB \_\_\_\_ (Docket No. 03-1124, issued August 25, 2003); *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

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> In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>5</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 his subsequent course of action.<sup>6</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>7</sup> 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, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>8</sup> Although 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>9</sup> an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.<sup>10</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>11</sup>

### ANALYSIS

The Board finds that appellant has not established fact of injury because he failed to establish how factors of his federal employment caused his alleged injury. On the notice of traumatic injury form, appellant indicated that the cause of his injury was "unknown." The medical reports on July 28, 2003 contain no reference to the cause of appellant's strain beyond noting that he lifted weights two days prior to seeking medical treatment. In an undated letter to

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<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>7</sup> *Id.* at 255, 256.

<sup>8</sup> *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

<sup>9</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>10</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>11</sup> *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

Dr. Gaines, the physician who treated him on July 28, 2003, appellant stated that his injury occurred while lifting a heavy sack of mail. This was the first time appellant identified his federal employment as the cause of his medical condition.

The Board has held that a claimant's statement 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>12</sup> However, the Board finds that appellant has failed to establish that he sustained an injury, as alleged, due to the inconsistencies in how the injury was sustained. On July 28, 2003 appellant filed a claim for compensation for a traumatic injury and noted the cause of the injury was "unknown." In reports from Dr. Gaines and Mt. Auburn hospital, the history of the injury reported that appellant lifted weights two days prior, or on July 26, 2003. These reports contain no reference to any work activity as causing appellant's injury. The first indication that the cause of the injury was not "unknown" was in the letter received by the Office on September 12, 2003, in which appellant related to Dr. Gaines that he lifted a heavy sack of mail on July 28, 2003. He requested her to write a medical report attributing his sprain to this employment incident. Appellant's failure to identify a specific employment incident as causing a traumatic injury and the fact that contemporaneous medical reports contain no reference to any employment incident, create a substantial question as to whether appellant injured himself while lifting a heavy sack of mail on July 28, 2003. Appellant has not met his burden to establish that he sustained an injury in the performance of duty on July 28, 2003 at the time and in the manner alleged.

Consequently, appellant has not established the first component of fact of injury. Appellant has not established that he experienced an employment incident that gave rise to his injury.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury to his left arm in the performance of duty.

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<sup>12</sup> *Thelma Rogers*, 42 ECAB 866, 869-70 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 18, 2003 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 31, 2004  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member