

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

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JUANITA PITTS, Appellant )

and )

DEPARTMENT OF THE AIR FORCE, )  
McGUIRE AIR FORCE BASE, NJ, )  
Employer )

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Docket No. 04-1527  
Issued: October 28, 2004

*Appearances:*

Thomas R. Uliase, Esq., for the appellant  
Office of the Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

WILLIE T.C. THOMAS, Alternate Member  
MICHAEL E. GROOM, Alternate Member  
A. PETER KANJORSKI, Alternate Member

**JURISDICTION**

On May 24, 2004 appellant filed a timely appeal from a February 5, 2004 merit decision of an Office of Workers' Compensation Programs' hearing representative, affirming a June 2, 2003 decision that she did not establish an injury in the performance of duty on March 10, 2003. Under 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on March 10, 2003.

**FACTUAL HISTORY**

On April 18, 2003 appellant, a 44-year-old store checker, filed a traumatic injury claim for benefits alleging that she injured her low back due to prolonged standing, twisting, pulling and pushing on March 10, 2003. The employing establishment controverted the claim,

contending that she faked an injury because the employing establishment had directed her to return to light duty based on updated medical evidence after being out of work for two and one half years due to a prior injury.

In a report dated January 30, 2003, Dr. Robert R. Bachman, a Board-certified orthopedic surgeon, opined that appellant had recovered from her lumbar strain injury of July 11, 2001, when she fell at work, and was capable of resuming her usual work. She submitted a March 31, 2003 Form CA-20 report in which the date of injury is reported as both July 11, 2001 and March 10, 2003. The form states that the injury occurred when appellant fell at work. She also submitted a disability slip dated March 13, 2003 diagnosing a herniated cervical disc and indicating that she was disabled as of March 10, 2003. No history of injury was provided.

In a memorandum of controversion dated April 22, 2003, the employing establishment asserted that appellant made inconsistent and inaccurate statements regarding her alleged injury. The employing establishment noted that there were suspicious circumstances regarding her alleged injury and a lack of medical documentation to support her claim. The memorandum stated:

“[Appellant] did not return to work until she was notified by [the Office] that her compensation payments were to be terminated and the [employing establishment] directed her to return to work based upon independent medical examiners. [She] was evaluated by two independent medical examiners consistent with [the Office’s] guidelines and found by both that she could perform the duties of her cashier position.... [Appellant] was reluctant to return to work and repeatedly stated in a [tele]phone conversation prior to her return that she wanted to know what would happen if she were injured at work again. On March 10, 2003 [she] worked only for a few hours (approximately two and one-half hours) when she ... turned in her till to go on break. According to witnesses, [appellant] turned in her till and walked away. She was then observed standing complaining that her back was hurting. The description by [appellant] was of a spontaneous action, as she was not doing anything in particular that would have triggered her reaction.”

By letter dated April 29, 2003, the Office advised appellant that she needed to submit additional information in support of her claim. The Office requested medical evidence and factual evidence, including statements from witnesses, which would corroborate her account of the events which occurred on March 10, 2003. The Office stated that appellant had 30 days to submit the requested information. In a statement received by the Office on May 27, 2003, appellant asserted that the March 10, 2003 injury occurred when she was at her register scanning products. She stated that she tried to lift a 25-pound bag of dog food and run it across the scanner when she experienced severe, intense pain in her middle and lower back radiating down to her buttocks and her legs.

In a report dated May 4, 2003, Dr. Marshall Gardner, an osteopath, provided a history of injury on July 11, 2001 and results on examination. He opined that appellant could perform repetitive motions involving the lumbar spine, knees or elbows. In a report dated June 30, 2003, Dr. Samuel Friedman, an osteopath, provided a history noting that appellant returned to work on

March 10, 2003 and had increasing low back pain since that time. He did not discuss a lifting injury on March 10, 2003.

By decision dated June 2, 2003, the Office denied appellant's claim, finding that she failed to establish fact of injury. The Office found that the evidence appellant submitted was insufficient to establish that the alleged traumatic incident occurred as alleged. The Office also found that appellant failed to submit medical evidence containing a diagnosis which could be connected to the claimed event.

By letter dated June 18, 2003, appellant's attorney requested a hearing, which was held on November 18, 2003. Appellant reiterated that the March 10, 2003 injury occurred when she was at her register scanning products. She tried to lift a 25-pound bag of dog food and run it across the scanner, when she began to experience low back spasms. In a report dated July 17, 2003, Dr. Diane G. Portman, a Board-certified anesthesiologist, related appellant's history that she sustained her injury on March 10, 2003 when she tried to lift a 25-pound bag of dog food.

The employing establishment submitted statements from two supervisors who noted that they viewed a videotape of appellant at work on the alleged date of injury, March 10, 2003. The supervisors indicated that she was smiling and joking while conversing with her coworkers and showed no signs of discomfort while performing checkout duties.

By decision dated February 5, 2004, an Office hearing representative affirmed the June 2, 2003 Office decision.

#### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing that 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 timely filed within the applicable time limitation period 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 an occupational disease.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. 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.<sup>4</sup> An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged,

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>4</sup> *John J. Caralone*, 41 ECAB 354 (1989).

by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>5</sup>

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup> The medical evidence required to establish causal relationship is usually rationalized medical evidence. 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.<sup>7</sup>

### ANALYSIS

The Board finds that appellant has not established fact of injury due to inconsistencies in the evidence that cast serious doubt as to whether the specific traumatic incident occurred at the time, place and in the manner alleged. Appellant alleged in her undated statement and in her hearing testimony that she injured her lower back while lifting a 25-pound bag of dog food. On the claim form appellant stated that the injury was due to prolonged standing, twisting, pulling and pushing of groceries. The statements from two coworkers that she submitted merely indicated that she claimed to have begun experiencing pain on March 10, 2003; they did not state that they observed her lifting a heavy bag of dog food. The employing establishment produced statements from two supervisors who noted that they observed a store videotape of the day in question and that appellant did not exhibit any distress or discomfort.<sup>8</sup> This contradictory evidence creates uncertainty as to the time, place and in the manner in which appellant experienced an incident at work on March 10, 2003.

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<sup>5</sup> *Joseph Albert Fournier*, 35 ECAB 1175 (1984).

<sup>6</sup> *Id.* For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

<sup>7</sup> *Id.*

<sup>8</sup> The evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. See generally *Sue A. Sedgwick*, 45 ECAB 211, 218 n.4 (1993); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Computation of Compensation*, Chapter 2.900(b)(3) (September 1990).

Moreover, the contemporaneous medical evidence does not provide any history of a lifting incident on March 10, 2003. A March 13, 2003 disability slip did not address a history of a lifting injury, nor did the May 4, 2003 report from Dr. Gardner or the June 30, 2003 report from Dr. Kahn.

Appellant failed to submit sufficient evidence to explain the discrepancies in her case. This casts doubt on her assertion that she injured her lower back while lifting a 25-pound bag of dog food on March 10, 2003. The Office requested that appellant submit additional factual and medical evidence explaining how she injured her lower back on that date in support of her claim that her lower back pain was related to the alleged work incident. She failed to submit such evidence. The circumstances of this case, therefore, cast serious doubt upon the occurrence of a March 10, 2003 incident in the manner as described by appellant. Given the inconsistencies in the evidence regarding how she sustained her injury, the Board finds that there is insufficient evidence to establish that appellant sustained a traumatic lifting incident in the performance of duty as alleged.<sup>9</sup>

### **CONCLUSION**

The Board finds that appellant has not met her burden to establish that she sustained an injury in the performance of duty on March 10, 2003 as alleged.

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<sup>9</sup> See *Matthew B. Copeland*, 6 ECAB 398, 399 (1953) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty); see also *Mary Joan Coppolino*, 43 ECAB 988 (1992).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 5, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 28, 2004  
Washington, DC

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

A. Peter Kanjorski  
Alternate Member