

Appellant submitted an attending physician's report dated May 10, 2004 signed by Dr. Cyrus D. Assadi, a treating physician, relating appellant's allegation that, while "pushing and pulling video equipment" on April 14, 2004, she aggravated an earlier injury. Dr. Assadi provided a diagnosis of herniated disc at C5-6 with left arm radiculopathy and numbness of the left hand and fingers and indicated that appellant required cervical disc surgery.

On May 19, 2004 the Office notified appellant that the evidence submitted was insufficient to establish her claim. She was advised to provide additional information, including the reason for the delay in filing the claim and details regarding the movement of the video equipment on the date of the alleged injury.

Appellant submitted a May 12, 2004 disability certificate from Dr. Assadi indicating that she was unable to work from May 10 through September 6, 2004. In a May 10, 2004 duty status report, Dr. Assadi related appellant's description of her April 14, 2004 injury, stating that she was pushing a video cabinet when she felt pain in her cervical spine. In a May 25, 2004 attending physician's report, Dr. Assadi opined that appellant was disabled from April 14, 2004 for an undetermined period of time and required cervical disc surgery, bone fusion and extensive physiotherapy. In a May 25, 2004 work capacity evaluation, Dr. Assadi opined that appellant would be unable to work until the required surgery was performed.

By letter dated June 9, 2004, the employing establishment controverted appellant's claim, stating that on the date of the alleged injury, appellant was not responsible for moving video equipment.

In a June 9, 2004 memorandum, appellant stated that excruciating pain had prevented her from filing the necessary paperwork for the first few weeks after injury. She indicated that she received medical attention from her private physician immediately after the April 14, 2004 injury, but that she had not realized the severity of the injury because she had been taking pain medication for a previous foot injury. Appellant notified the employing establishment on April 15, 16 and 21, 2004 that she was unable to work. She stated that she reported the injury to Teresita Reyes and Raphael Ramirez on April 14, 2004 and that she asked Ms. Reyes for permission to see her doctor. Appellant further stated that she moved the video cabinet because it had been left in a hallway and was blocking the path of patients being brought in and out of operating rooms on stretchers and beds. Appellant stated that, to her understanding, her claim was for an occupational injury.¹

In a merit decision dated June 23, 2004, the Office denied appellant's claim, finding that the evidence was insufficient to establish that appellant had sustained an injury on April 14, 2004. The Office found that appellant had failed to establish the fact of injury.

On July 10, 2004 appellant requested an oral hearing. By letter dated September 13, 2004, appellant, by counsel, withdrew her request for an oral hearing.

¹ The Board notes that the Office properly treated appellant's claim as a traumatic injury claim. Appellant alleged that she incurred an injury within a single workday. Her allegation that the April 14, 2004 injury was an exacerbation of an earlier injury does not render the claim occupational in nature. For a definition of the term "traumatic injury," see 20 C.F.R. § 10.5(ee).

In a report dated January 20, 2005, Dr. Assadi stated that he had treated appellant from April 14, 2004 through January 4, 2005. Appellant informed him that, on April 9, 2004, she felt pain in the left side of her neck and in her left arm while lifting heavy bags of saline solution and that on April 14, 2004 while pushing and pulling video equipment, “the pain became suddenly exacerbating in the neck, left shoulder and arm with tingling sensation of the left hand and numbness of the left thumb.” Dr. Assadi provided diagnoses of herniated C5-6 cervical spine disc with radiculopathy to the left arm, numbness to the left arm and thumb, and neck spasms resulting in headaches; bleeding disorder; tension headache; and depression due to problems arising from discopathy pain, bleeding disorder and inability to work.

In a report dated May 13, 2004, Dr. Hossein Tergan, a treating physician, provided diagnoses of bleeding disorder, RO platelet dysfunction and iron deficiency anemia, severe.

In a letter dated April 5, 2005, Dr. Assadi opined that appellant’s condition was causally related to her employment. He stated that she was injured on April 9, 2004 while working in an operating room. Dr. Assadi further indicated that her April 9, 2004 injury was “aggravated and exacerbated by another injury on April 14, 2004 while she was working in the operating room with pain and discomfort.”

On April 21, 2005 appellant, through her representative, requested reconsideration of the June 23, 2004 decision. Appellant’s representative asserted that appellant was initially injured on April 9, 2004 when she experienced pain in the left shoulder area while lifting heavy bags of saline solution. She was injured again on April 14, 2004, when she felt a tingling sensation and pain in her neck and left shoulder area as a result of pushing a large piece of video equipment. Appellant’s representative contended that appellant reported the April 14, 2004 incident, that the April 14, 2004 incident aggravated or exacerbated the preexisting April 9, 2004 injury and did not bar compensation, and that the medical evidence contained a rationalized medical opinion demonstrating a causal relationship between the April 14, 2004 incident and appellant’s diagnosed condition.

The record contains a memorandum of a telephone conference held on June 22, 2005 between a Ms. Dingle of the employing establishment and Kevin Kates, senior claims examiner. Ms. Dingle stated that appellant did not report the alleged April 9, 2004 injury to the employing establishment. The memorandum reflects that, on April 15, 2004, appellant notified her acting supervisor, Ms. Reyes, that she was sick and unable to report to work, but that appellant did not mention that she had sustained an injury at work. Ms. Dingle stated that appellant had no reason to move a video cart on April 14, 2004. She further indicated that, after working on a tonsillectomy, appellant requested annual leave because she was unable to continue working and did not report that she had injured herself in the course of her employment.

By decision dated July 13, 2005, the Office denied modification of its June 23, 2004 decision, finding that the fact of injury had not been established.

LEGAL PRECEDENT

The Federal Employees' Compensation Act² provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.³ The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."⁴

An employee seeking benefits under the Act has the burden of proof to establish 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁵ When an employee claims that he or she sustained a traumatic injury in the performance of duty, he must establish the "fact of injury," namely, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.⁶

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁷

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.⁸ An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere

² 5 U.S.C. §§ 8101 *et seq.*

³ 5 U.S.C. § 8102(a).

⁴ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB ____ (Docket No. 04-1257, issued, September 10, 2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

⁵ *Robert Broome*, 55 ECAB ____ (Docket No. 04-93, issued February 23, 2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *See Paul Foster*, 56 ECAB ____ (Docket No. 04-1943, issued December 21, 2004). *See also Betty J. Smith*, 54 ECAB ____ (Docket No. 02-149, issued October 29, 2002); *Tracey P. Spillane*, 54 ECAB ____ (Docket No. 02-2190, issued June 12, 2003). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

⁷ *See Paul Foster*, *supra* note 5.

⁸ *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion 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 established incident or factor of employment.¹⁰

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury on April 14, 2004.

Appellant noted on her CA-1 form that she sustained a herniated disc while pushing a video cabinet on April 14, 2004. She provided no detailed account of and stated no apparent cause for the injury. Appellant presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did she allege that she experienced a specific event, incident or exposure at a definite time, place and manner.¹¹ There was no explanation as to the time, place or manner in which appellant suffered a herniated disc.

Appellant's vague recitation of the facts does not support her allegation that a specific event occurred which caused an injury.¹² Moreover, there are inconsistencies in the evidence which cast serious doubt on the validity of her claim. Appellant stated that she felt pain in her cervical spine when she was pushing a video cabinet, but, there is no corroborating evidence that appellant ever moved the video cabinet. Ms. Dingle of the employing establishment stated that appellant's duties did not require her to move the video equipment and that she had no reason to move a video cart on April 14, 2004. Appellant has also provided no corroborating evidence that she reported her injury at the time it occurred. Ms. Dingle indicated that, although appellant requested annual leave on the afternoon of the alleged injury, she did not report at that time that

⁹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

¹⁰ *John W. Montoya*, 54 ECAB ____ (Docket No. 02-2249, issued January 3, 2003).

¹¹ *See Paul Foster*, *supra* note 6; *see also Tracey P. Spillane*, *supra* note 6.

¹² *See Dennis M. Mascarena*, *supra* note 9.

she had injured herself in the course of her employment, nor did she inform her acting supervisor that she had sustained a work-related injury when she called in sick on April 15, 2004. Appellant alleged in her CA-1 that she first injured herself on April 14, 2004. She later claimed that she was originally injured at work on April 9, 2004 while lifting heavy bags of saline solution. The record reflects that she never reported the alleged April 9, 2004 incident and waited three weeks to report the alleged April 14, 2004 incident. Appellant has not presented any evidence, such as witness statements, to substantiate her injury on April 14, 2004, as alleged. Appellant's representation that she sustained a herniated disc or experienced pain does not describe the occurrence of an injury.

Inconsistencies in the medical evidence of record further undermine appellant's claim. In his May 10, 2004 report, Dr. Assadi related appellant's allegation that while "pushing and pulling video equipment" on April 14, 2004, she had aggravated an earlier injury. However, he did not describe the nature of either injury or how they were related. In a May 10, 2004 duty status report, he described appellant's April 14, 2004 injury, stating that she was pushing a video cabinet when she felt pain in her cervical spine. He made no mention of her alleged previous injury. In a report dated January 20, 2005, Dr. Assadi stated that he had treated appellant from April 14, 2004 through January 4, 2005. However, the record does not contain a copy of any report dated April 14, 2004. In fact, the earliest medical report of record is dated May 10, 2004. In a letter dated April 5, 2005, Dr. Assadi stated that appellant was injured on April 9, 2004 while working in an operating room. He further indicated that her April 9, 2004 injury was "aggravated and exacerbated by another injury on April 14, 2004 while she was working in the operating room with pain and discomfort." However, the record does not contain any evidence in the form of a medical report or a statement from a physician that appellant sought any medical treatment for the alleged April 9, 2004 injury.

The Board finds that appellant's allegations are inconsistent with the surrounding facts and circumstances and her subsequent course of action. The lack of corroborative evidence, late notification of injury, and inconsistencies in the evidence cast substantial doubt on the validity of appellant's claim.¹³

In *Tracey P. Spillane*,¹⁴ an employee filed a claim alleging that she sustained an allergic reaction at work. However, she did not clearly identify the aspect of her employment which she believed caused the claimed condition, but only made vague references to "possibly having a reaction to magazines or latex gloves." The Board held that she did not adequately specify the employment factors which caused her need for medical treatment, nor did she specify details such as the extent and duration of exposure to any given employment factors. The medical record reflected that the employee did not clearly report to her physicians that she felt her claimed condition was due to a specific and identifiable employment factor. In this case, appellant's allegations are vague and do not relate with specificity the cause of the injury or how she sustained a herniated disc while performing her duties on April 14, 2004. She did not address the immediate consequence of the injury (*e.g.*, whether she fell, stumbled or had to sit down). Appellant has not met her burden of proof to establish that she sustained an injury in the

¹³ See *Paul Foster*, *supra* note 6.

¹⁴ See *supra* note 6.

performance of duty, and it is not necessary to discuss the probative value of the medical reports.¹⁵

The Board finds that appellant has failed to establish the fact of injury: she did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place and in the manner alleged or that the alleged incident caused her condition.

CONCLUSION

Appellant has not met her burden of proof to establish that she sustained a traumatic injury to her cervical spine in the performance of duty on April 14, 2004.

ORDER

IT IS HEREBY ORDERED THAT the July 13, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 21, 2005
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Willie T.C. Thomas, Alternate Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ *Id.*