

treatment on June 12, 2002; an emergency room report provided a history that appellant was in an argument with her supervisor, when she stepped toward him and felt her leg begin to ache as she fell to the ground. A second emergency room report provided a history of sudden lower leg pain while standing at work, with pain spreading to knees and upper legs. The report stated that appellant denied syncope or dizziness, but was unable to walk steadily.

In a report dated June 13, 2002, Dr. William Simpson, an orthopedic surgeon, provided a history that appellant “was in the process of getting out of a chair and began to walk. As she stepped forward, she felt a torsional force as well as a ‘popping’ sound in her lower back. She also felt a ‘stabbing’ pain in the legs and numbness about the feet.” He diagnosed acute cervical and lumbosacral sprains, trapezuis sprain, probable cervical disc herniation and lumbar disc bulge and a stress-related headache. Dr. Simpson stated his evaluation “suggests that her present symptoms do represent residuals of her injuries of June 12, 2002.”

By statement dated June 17, 2002, Ms. Henderson noted that she observed appellant stop, appear to have back pain and be in need of assistance. She stated that the supervisor, Steven De La Cruz, asked her for a form for appellant to go to the medical unit, “then [the supervisor] and I started toward [appellant] in the rear, as she was now on the floor moaning and crying about her pain.” In a statement dated June 25, 2002 Mr. De La Cruz, reported that, on June 12, 2002, at approximately 2:00 a.m., he had advised appellant that her request for a pay adjustment would be denied. He indicated that appellant took a step toward him and stated that she wanted a union steward, then appellant “cringed and placed her right hand on my right arm, as she slowly bent down towards the carpet floor.” Mr. De La Cruz stated that he went to get a nurse and when he returned appellant was lying on the ground.

In a response to questions posed by the Office, appellant indicated in an August 20, 2002 statement that, as she stepped out to follow the supervisor, she experienced stabbing pains and spasms in her back and legs, with numbness in her feet. Appellant stated that apparently the supervisor needed some sort of form, and “I fell to the floor because, I felt weak.”

By decision dated August 27, 2002, the Office denied appellant’s claim on the grounds that the medical evidence was insufficient to establish the claim. Appellant requested a hearing, which was held on April 8, 2003. At the hearing appellant described the June 12, 2002 incident as “I got out of the chair and my legs were weak and as I started to go towards him, I told him my legs are weak and then I fell to the ground and then the ambulance came and took me to the hospital.” Appellant submitted a March 20, 2003 report from Dr. Simpson, who now provided a history of injury that appellant “attempted to arise and fell to the ground. As she fell, she felt a torsional force as well as a ‘popping’ sound in her lower back. She also felt a ‘stabbing’ pain in the legs and numbness about her feet.” Dr. Simpson stated that appellant related her symptoms to falling while in the process of performing her job duties.

In a decision dated May 29, 2003, the Office hearing representative found that the factual evidence did not establish that appellant fell at work as alleged. The hearing representative also found that the medical evidence was insufficient, and affirmed the August 27, 2002 decision as modified.

Appellant requested reconsideration and submitted a June 8, 2003 statement from Ms. Henderson, who stated that Mr. De La Cruz was with her at her desk when “I observed [appellant’s] fall to the ground...” By decision dated December 18, 2003, the Office denied modification of the prior decisions.

In a letter dated February 23, 2004, appellant requested reconsideration. She submitted evidence that included an occupational disease claim (Form CA-2) dated September 29, 2003, with regard to a claim for an emotional condition.

In a decision dated July 14, 2004, the Office reviewed the case on its merits and denied modification of the prior decisions.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act¹ has the burden of establishing that he or she sustained an injury while in the performance of duty.² 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. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.³

It is well established that a claimant has not established fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged.⁴

ANALYSIS

The claim filed in this case has two different factual aspects that must be considered. The first is appellant’s allegation that she felt pain and numbness after arising from a chair and following her supervisor. The second aspect is the allegation that she fell and sustained an injury as a result of the fall.

With respect to appellant’s initial statement, there does not appear to be any factual dispute that appellant began walking behind her supervisor and experienced pain in her back and legs, with numbness in her feet. In his June 13, 2002 report, Dr. Simpson diagnosed acute cervical and lumbosacral sprains, trapezius sprain, probable cervical disc herniation and lumbar disc bulge. He did not, however, provide a reasoned medical opinion on the causal relationship

¹ 5 U.S.C. §§ 8101-8193.

² *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

³ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁴ *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

of the diagnosis with appellant's federal employment. Dr. Simpson stated that appellant stepped forward and heard a popping sound in her back with pain in the legs and feet numbness, without explaining how the diagnosed conditions were causally related to the specific incident at work on June 12, 2002. The record does not contain a medical report with a reasoned opinion on causal relationship between a diagnosed condition and the getting out of a chair and walking behind the supervisor on June 12, 2002.

With respect to the allegation of a fall at work on June 12, 2002, the Board notes that appellant did not provide a detailed statement regarding the allegation, such as how she fell, what part of the body struck the ground and other relevant details. Moreover, there are inconsistencies in the record with regard to the alleged fall, particularly in the evidence contemporaneous with the alleged fall. Appellant did not mention a fall on her claim form, nor did she report a fall to Dr. Simpson on June 13, 2002. Mr. De La Cruz stated that appellant grabbed his arm as she bent down toward the carpeted floor, and the coworker, Ms. Henderson, did not initially state that she saw appellant fall, but rather that she assisted appellant while appellant was on the floor. The hospital reports include a report that mentioned a fall to the ground, and another that does not mention a fall. The evidence of record is both incomplete and inconsistent with respect to the allegation that appellant sustained a fall that resulted in an injury on June 12, 2002. It is appellant's burden of proof to establish both the factual and medical elements of her claim, and the Board finds that appellant did not establish a fall as alleged.

CONCLUSION

The Board finds that appellant did not establish an injury in the performance of duty on June 12, 2002. The medical evidence does not establish an injury from walking on that date, nor is the factual record sufficient to establish a fall as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated July 14, 2004 and December 18, 2003 are affirmed.

Issued: January 24, 2005
Washington, DC

Alec J. Koromilas
Chairman

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member