

after she gave her a leave request form to complete (PS Form 3971).¹ According to Ms. Glover, appellant later claimed that she hurt her back “picking up a bucket.”

In a separate statement also dated November 3, 2001, Ms. Glover indicated that appellant approached her at 11:00 a.m. and advised that her back hurt and she came to work and thought she could make it, but could not and wanted to go home. Ms. Glover stated that she asked appellant why she did not tell her in the morning before starting her tour and appellant reportedly apologized and said she thought she could make it. She gave appellant a Form 3971 to fill out and after appellant completed it and Ms. Glover signed the leave request, appellant informed Ms. Glover that she lifted a bucket and hurt her back and wanted to go to the hospital.²

Brian Fielding, a coworker, provided a November 3, 2001 statement indicating that he was working by the desk with Ms. Glover and another supervisor, Mary Basich, when appellant came by and told Ms. Glover that she came to work with her back hurting her and thought she could work, but that the pain got to be too much and she wanted to leave. Mr. Fielding further indicated that appellant filled out a Form 3971 requesting sick leave and asked Ms. Glover to take her to the hospital. Ms. Glover reportedly asked appellant why she wanted to be taken to the hospital and appellant replied that she hurt her back while lifting a bucket.

Ms. Basich also provided a November 3, 2001 statement. She noted that appellant advised Ms. Glover at 11:00 a.m. that “she came to work with her back hurting” and thought she would be able to work but could not. Ms. Basich also indicated that Ms. Glover told appellant that she should have informed her about her condition when she started work. Appellant reportedly apologized and stated that she wanted to go home. Ms. Glover told appellant to fill out a Form 3971 and appellant complied, requesting sick leave. After Ms. Glover signed the completed form, appellant asked her if she was taking her to the doctor. Ms. Glover asked “Why?” and according to Ms. Basich appellant replied that she “hurt herself while picking up a bucket.” Ms. Glover responded that appellant had not said she hurt herself on the job, but that she came to work with her back hurting. Ms. Basich further indicated that Mr. Fielding was also present during the conversation between appellant and Ms. Glover.

Dr. Priya V. Ramshesh, an internist, examined appellant on November 3, 2001 and reported that appellant twisted her back while lifting and bending down. The doctor noted findings of acute back pain. On an accompanying duty status report (Form CA-17), Dr. Ramshesh noted a diagnosis of back sprain and the doctor recommended complete rest until further evaluation.

Dr. Eric Senat, a Board-certified orthopedic surgeon, examined appellant on November 9, 2001 and reported that she injured her lower back on November 3, 2001 while picking up a heavy bucket. He also noted a prior history of low back injury due to a July 15, 1999 motor

¹ The record includes a copy of the PS Form 3971 signed by appellant and dated November 3, 2001.

² Appellant’s counsel argued that Ms. Glover’s November 3, 2001 statement should not be relied upon because it is illegible. The Board notes that while a portion of the statement is indecipherable, the majority of the information contained in the document is legible and is consistent with the information Ms. Glover reported on appellant’s Form CA-1.

vehicle accident. A November 9, 2001 x-ray of the lumbar spine revealed mild reduction of lumbar lordosis due to muscle spasm. Dr. Senat diagnosed mild low back pain with sciatica, which he attributed to the described employment activity. He noted that this was an aggravation of a previous condition. Dr. Senat also indicated that appellant was totally disabled. In a November 29, 2001 follow-up examination, Dr. Senat reported that appellant remained very symptomatic and her examination revealed persistent stiffness and paraspinal muscle spasms. When he next saw her on December 18, 2001, appellant was still markedly symptomatic with sciatica, which limited her daily activities. Appellant continued to show signs of persistent low back pain with sciatica and muscle spasms on January 2, 2003 when Dr. Senat reexamined her.

On January 11, 2002 appellant submitted another statement alleging that Ms. Glover wrongfully and willfully provided false and misleading information regarding the injury sustained on November 3, 2001. Appellant stated that she did not recall either filing or signing a Form 3971 and therefore she questioned the authenticity of her signature. Appellant also claimed that she was under great pain and awaiting transport to the hospital when she provided the information regarding her injury to Ms. Glover, who filled out the injury report. Appellant also noted that a coworker, Joe Miraglia, provided a statement that contradicted Ms. Glover's account of what appellant said regarding the cause of her injury. She claimed that, based on Mr. Miraglia's statement, her injury occurred between 8:30 a.m. and 9:00 a.m., after she had already clocked in at work.

Mr. Miraglia's January 11, 2002 statement indicated that on the day in question appellant "asked [him] to tell the supervisor that her back hurt too much for her to work around 8:30 [a.m. to] 9:00 a.m."

In a decision dated January 25, 2002, the Office denied appellant's claim on the basis that she failed to establish that she sustained an injury as alleged.

Appellant requested reconsideration on February 19, 2002. She submitted additional treatment records from Dr. Senat and two statements from coworkers. In a February 11, 2002 statement, Jeff Kromowitz indicated that at approximately 12:30 p.m. on November 3, 2001 he saw appellant wincing in extreme pain. Mr. Kromowitz asked appellant if there was anything he could do to help her. He noted that she could hardly stand up and he suggested that she sit with her back against the case while she waited to be taken to the hospital.

Another coworker, Eva Julliet, provided a February 16, 2001 statement. Ms. Julliet indicated that she and appellant greeted each other on the morning of November 3, 2001 and discussed how things were going. She also indicated that they both started their normal day's work and at no time during their discussion did appellant hint or suggest that she was not feeling well. Ms. Julliet stated that appellant appeared to be very positive and uplifted.

The Office provided the employing establishment an opportunity to respond to the additional evidence submitted. Ms. Glover submitted a March 12, 2002 statement indicating that appellant did not inform her prior to working that her back was hurting. She reiterated that appellant approached her desk at approximately 11:00 a.m. to inform her that she came to work with her back hurting and thought she would be able to work, but could not and she wanted to go home. Ms. Glover further stated that she instructed appellant to complete a Form 3971 and after

completing the form appellant said that she lifted a bucket and hurt her back and wanted to go to the hospital.³

Appellant provided another statement dated February 28, 2002. She indicated that she reported to work on November 3, 2001 at 7:30 a.m. Appellant saw Ms. Glover in the office, greeted her and proceeded to start her assigned route. She recalled having a brief conversation with Ms. Glover that morning regarding lipstick. Appellant continued to work until her 8:20 a.m. break, which lasted 10 minutes. She returned to her regular duties and at about 10:30 a.m. she began boxing mail. At approximately 10:40 a.m. she began to rack some more flats and when she “bent down to pick up a bucket,” she immediately felt extreme pain in the lower part of her back. Mr. Miraglia reportedly saw appellant wincing in pain and he immediately went to call Ms. Glover. Appellant indicated that Ms. Glover did not bother to come over and see what was wrong, but instead summoned Mr. Miraglia to her office over the public address system. According to appellant, Ms. Glover later called her to the office. She said she informed Ms. Glover “quite explicitly” what had happened and how it happened. Appellant indicated that she picked up a bucket of flats when she felt something snap in her lower back, which caused excruciating pain. Ms. Glover reportedly handed appellant a Form CA-1 and told her to have it completed. Appellant said she completed the form while under great pain. She was later transported to the hospital at about 12:30 p.m. Appellant also indicated that while she was in the Office with Ms. Glover she never requested to go home.

The Office denied modification by decision dated May 28, 2002. Appellant requested reconsideration on June 24, 2002, which the Office also denied on July 8, 2002.

On August 26, 2002 appellant again requested reconsideration. She submitted a September 4, 2002 report from Dr. Senat and also provided another personal statement regarding the events of November 3, 2001. In the August 26, 2002 statement, appellant alleged that her injury occurred at 8:30 a.m. on November 3, 2001. She stated that she lifted a bucket of mail and pulled her back. Appellant also stated that Mr. Miraglia noticed her pain and she asked him to inform Ms. Glover that she had injured her back and was in pain. Appellant further stated that she told Ms. Glover that she would try to continue working, but by about 11:00 a.m. the pain was unbearable so she filled out a Form 3971 and requested sick leave. She indicated that Ms. Glover then instructed her to fill out a Form CA-1.

Mr. Miraglia provided another statement dated August 15, 2002. He was reportedly working next to appellant at about 8:30 a.m. to 9:00 a.m. when he noticed that she appeared to be in pain. Mr. Miraglia stated that he asked appellant if she was okay and she responded that she hurt herself lifting a bucket. Appellant asked him to get the supervisor to come over to her. Mr. Miraglia stated that he told Ms. Glover that appellant hurt herself and wanted her to come over.

³ Ms. Glover also commented on a February 22, 2002 conversation with appellant when she appeared for a predisciplinary interview. Appellant reportedly acknowledged that she had completed both a Form 3971 and CA-1. The employing establishment also submitted a February 25, 2002 removal action against appellant for lying to management and falsely receiving remuneration by claiming an on-the-job injury.

The Office again denied modification by decision dated December 16, 2002.

With the assistance of counsel, appellant filed another request for reconsideration on November 26, 2003. Appellant's counsel argued that she injured herself between 10:30 a.m. to 10:45 a.m. lifting a bucket of mail and that she did not report to work injured as evidenced by Ms. Julliet's February 16, 2001 statement. Counsel also argued that Dr. Senat's medical reports, including his most recent report dated September 4, 2002, establish causal relationship. Counsel also claimed that the Office failed to provide a legible copy of Ms. Glover's November 3, 2001 statement. The Office denied modification in a decision dated March 5, 2004.

Appellant's counsel again requested reconsideration on March 26, 2004. He argued that the evidence established that appellant reported to work on November 3, 2001 with no pain and fit for duty. Counsel also alleged error with respect to the Office's reliance on Ms. Glover's November 3, 2001 statement. Additionally, counsel argued that the Office's various decisions included inconsistent findings regarding the events of November 3, 2001.

In a decision dated August 30, 2004, the Office denied modification. The Office explained that the various inconsistencies and contradictions in appellant's several statements cast serious doubt as to whether the incident occurred as alleged.

LEGAL PRECEDENT

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident that is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury.⁵ Causal relationship is a medical question that generally can be resolved only by rationalized medical opinion evidence.⁶

ANALYSIS

On her Form CA-1, appellant alleged that she injured her lower back on November 3, 2001 at 10:45 a.m. when picking up a bucket of flats. In a January 11, 2002 statement, appellant claimed that her injury occurred between 8:30 a.m. and 9:00 a.m. However, in her February 28, 2002 statement, she indicated that at approximately 10:40 a.m. she began to rack some more flats and when she "bent down to pick up a bucket," she immediately felt extreme pain in the lower part of her back. She again claimed that her injury occurred at 8:30 a.m. in her August 26, 2002

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of causal relationship must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, in order to be considered rationalized, the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and claimant's specific employment factors. *Id.*

statement. Appellant also indicated that she told Ms. Glover that she would try to continue working, but by about 11:00 a.m. the pain was unbearable and she requested sick leave. Of the three statements appellant submitted, the August 26, 2002 statement was the only one in which she claimed to have returned to work following the alleged lifting incident. When appellant later retained counsel, the time of injury changed once again. In the two most recent requests for reconsideration, counsel's statement of facts indicated that appellant injured her back between 10:30 a.m. to 10:45 a.m. when she lifted a bucket of mail.

Mr. Miraglia's August 15, 2002 statement contradicts appellant's allegation that she injured her back lifting a bucket of mail at approximately 10:40 a.m. Although Mr. Miraglia originally reported only that appellant "asked [him] to tell the supervisor that her back hurt too much for her to work around 8:30 [a.m. to] 9:00 a.m.," he later reported that she told him at that time that "she hurt herself lifting a bucket." Not only does Mr. Miraglia contradict appellant's allegation that she injured herself around 10:40 a.m., his statement also does not establish that she sustained an injury between 8:30 a.m. and 9:00 a.m. Mr. Miraglia reported only that appellant appeared to be in pain and when he inquired about her condition she replied that she hurt herself lifting a bucket. He did not purport to have witnessed a lifting incident on the morning of November 3, 2001.

Ms. Julliet also did not witness appellant's alleged injury on November 3, 2001. Her February 16, 2001 statement indicated that, during an early morning conversation, appellant did not hint or suggest that she was not feeling well. Ms. Julliet stated that appellant appeared to be very positive and uplifted. Contrary to counsel's argument, Ms. Julliet's statement does not establish that appellant reported for duty on November 3, 2001 with no pain and fit for duty. The statement establishes only that appellant did not specifically say anything to Ms. Julliet regarding her physical condition.

While appellant has vacillated between 8:30 a.m. and 10:45 a.m. as the time of the alleged lifting incident, Ms. Glover has consistently maintained in both her November 3, 2001 and March 12, 2002 statements that appellant approached her at 11:00 a.m. and advised that her back hurt and that she came to work and thought she could make it, but could not and she wanted to go home. According to Ms. Glover, it was not until after appellant completed a PS Form 3971 requesting sick leave that she stated that she lifted a bucket and hurt her back and wanted to go to the hospital. Mr. Fielding and Ms. Basich corroborated Ms. Glover's account of the 11:00 a.m. conversation she had with appellant on November 3, 2001. Both individuals were present during the conversation and indicated that appellant told Ms. Glover that she came to work with her back hurting and thought she could work, but that the pain got to be too much and she wanted to leave. Both individuals indicated that it was not until after appellant completed a request for sick leave that she informed Ms. Glover that she hurt her back while lifting a bucket.

The evidence of record does not support appellant's allegation that she injured her back due to a work-related lifting incident on November 3, 2001. Appellant has offered varying accounts as to the time of injury and regardless of whether the incident occurred at 8:30 a.m. or 10:45 a.m.; she has not provided any evidence corroborating her allegation that she hurt herself while picking up a bucket of flats. Furthermore, the credible evidence of record establishes that appellant informed her supervisor at approximately 11:00 a.m. that she came to work with her back hurting. And it was only after appellant requested sick leave that she informed Ms. Glover

of the alleged lifting incident at work. The lack of corroborating evidence, the varying accounts of when the lifting incident occurred and the peculiar circumstances surrounding appellant's reporting of the alleged injury raise serious doubt that appellant sustained an employment injury on November 3, 2001.⁷ Consequently, appellant failed to satisfy her burden of proof.

CONCLUSION

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on November 3, 2001.

ORDER

IT IS HEREBY ORDERED THAT the August 30, 2004 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 10, 2005
Washington, DC

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁷ 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 her subsequent course of action. An employee has not met her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. *Delphyne L. Glover*, 51 ECAB 146, 148 (1999).