

her private physician. Appellant stopped work that day and sought care from the George Washington University Hospital, where an emergency room physician diagnosed back strain, shoulder strain and right knee pain and advised that she could work light duty with no carrying or lifting over 10 pounds for one week before returning to regular duty. Appellant, however, did not return to work.

On July 19, 2004 the Office requested additional factual and medical information. This included a physician's report which included the history of the injury along with a diagnosis and medical explanation as to how the reported work incident caused or aggravated the claimed injury.

In response, appellant submitted a copy of the workers' compensation questionnaire in which she stated that she was "cleaning and shining things at work" when she bent and felt neck pain which started to go into her arms. Appellant submitted reports from her attending physician, Dr. Eric G. Dawson, an orthopedic surgeon, together with physical therapy reports from July 19 to August 18, 2004. In a report dated August 6, 2004, Dr. Dawson advised that appellant was at work on June 24, 2004 when she slipped on the floor, grasped a hand rail and twisted to her left side with a sharp twisting motion. He noted that she went to the hospital following the injury and underwent physical therapy, but was unable to return to her work duties. Dr. Dawson noted that appellant had a back strain in January 2004, which resolved without problems. He provided examination findings and diagnosed cervical strain, dorsal myofascitis, lumbar discopathy and L5 nerve impingement. Physical therapy was recommended. On August 20, 2004 Dr. Dawson noted his examination findings and reported that appellant had spasm to the L/S musculature at the L3 to S1 levels and trigger points at the cervical dorsal junction without neurosensory or neuromotor deficit. He recommended the continuation of physical therapy and medication.

By decision dated August 27, 2004, the Office denied appellant's claim finding that the evidence of record failed to establish that she sustained an injury within the meaning of the Federal Employees' Compensation Act. The Office advised that the evidence submitted was insufficient to establish that the event occurred as alleged and there was no medical evidence which could be connected to the claimed event.

On February 16, 2005 appellant requested reconsideration and submitted copies of evidence previously of record. In a September 4, 2004 report, Dr. Dawson advised that appellant had lumbar discopathy of lower Grade 1 with some L5 nerve impingement of the dorsal nerve roots and soft touch neurosensory deficit without major motor deficit. He stated that appellant had no significant preexisting conditions and her signs and symptoms were reasonable and related to the mechanism of injury. In a September 23, 2004 report, Dr. Dawson related that, although he saw appellant approximately six weeks after her injury, she had provided a clear history. He stated that appellant's main problem was related to the lower back as her neck and shoulder condition had resolved to a baseline and/or manageable status. Dr. Dawson noted that appellant had two minor previous injuries, one which had occurred at work and the other from a motor vehicle accident. He stated that those injuries had completely resolved prior to the present work injury. Dr. Dawson further stated that the mechanism of the injury was a torsion or forced twist type of injury to the lower back which occurs when disc ligament fibers, which are often termed annular ligamentous fibers, are disrupted.

In an October 21, 2004 report, Dr. Dawson advised that, with regard to the initial mechanism of injury, he had stated somewhat inaccurately that appellant had a twist secondary to a slip. The actual mechanism or cause of appellant's injury was cleaning a bathroom facility and bending. Appellant was mopping and washing the bathroom walls when she suddenly had a sharp pain to the neck and shoulder with a pulling type of sensation that extended to the lower back, as provided by history. In technical terms, Dr. Dawson advised that this was a torsional movement of injury, which essentially was identical in terms of etiology or causality as he stated in his initial examination of August 6, 2004 and in his subsequent letter of September 23, 2004. In November 4 and 11, 2004 reports, he noted that appellant's magnetic resonance imaging (MRI) scans, electromyography (EMG) and nerve conduction velocity (NCV) studies were somewhat suboptimal, but revealed a discopathy and nerve impingement at L5-S1 bilaterally. In a November 12, 2004 attending physician's report, Dr. Dawson diagnosed a lumbar discopathy with myelography and opined that appellant was totally disabled from August 6 to December 3, 2004.

In a November 10, 2004 medical report, Dr. Rashid Khan, a Board-certified physiatrist to whom appellant was referred by Dr. Dawson, noted the history of injury as a slip without falling at work. He stated that appellant was working as a custodian in the bathroom and the floor was slippery. Appellant slipped and was able to grab something, during which she jerked and twisted her back. Dr. Khan stated that pain started in her upper extremities but mainly in her back. Dr. Khan provided examination findings and opined that appellant's symptoms and signs were suggestive of lower lumbosacral radiculitis/radiculopathy. He noted a possibility of underlying peripheral neuropathy and recommended NCV studies and EMG studies of the lower extremities. A copy of Dr. Khan's November 10, 2004 NCV study and EMG report was provided.

In a December 3, 2004 report, Dr. Dawson noted appellant's symptoms and advised that she had lumbar discopathy with nerve impingement based on her repeated signs of discopathy and the objective testing which supported a soft touch neurosensory loss of the L5 and S1 dermatomes. He noted that a review of her case revealed no significant or preexisting history of injury to the area and that appellant was at her workplace carrying out her duties without difficulty. Dr. Dawson advised that the injury was basically a slip on the floor which would be more properly termed a twist as she lost her balance and grasped an object, which resulted in a sharp twisting and torsional movement. He stated that this torsion, twist, stress or traction was the mechanism of injury and advised that appellant's pain and discomfort would be the appropriate and reasonable signs related to such an injury, which was demonstrated by her clinical findings and the objective testing of record. Additional progress reports of appellant's condition were submitted.

In a decision dated February 25, 2005, the Office denied modification of the August 27, 2004 decision. The Office found that there were inconsistencies as to how the injury actually occurred and what condition resulted. It further found that there was no evidence on file to support that a fall occurred after the claimed injury or before the claimed injury.

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.¹ The second component is whether the employment incident caused a personal injury.² An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.³

ANALYSIS

The initial question presented is whether an employment incident occurred as alleged on June 24, 2004. An injury does not have to be confirmed by eyewitnesses in order to establish 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.⁴

In the record before the Board, there are two different descriptions of how the June 24, 2004 incident at work occurred. Appellant attributed her condition to "cleaning (bending), mopping and washing bathroom walls" while in the performance of duty on June 24, 2004. She reiterated the same history of injury to both the employing establishment's nurse and the emergency room physician who treated her that day. Approximately six weeks later, appellant sought treatment from Dr. Dawson, who initially attributed her condition to a slip on the floor and grasp of a handrail and diagnosed cervical strain, dorsal myofascitis, lumbar discopathy and L5 nerve impingement. Dr. Dawson later indicated in an October 21, 2004 report that the mechanism of injury was stated inaccurately, as it was due to cleaning and bending while mopping and washing the bathroom walls. He described a torsional movement of injury identical to a twist secondary to a slip. However, in his December 3, 2004 report, Dr. Dawson reported that appellant had slipped, lost her balance and grasped an object which resulted in a sharp twisting and torsional movement. Dr. Dawson also referred appellant to Dr. Khan, who attributed appellant's injury to a slip without a fall. Based on the present record, appellant has not provided a consistent history of injury on her claim form and to her attending physicians. While her statement of sustaining injury on June 24, 2004 is consistent with her work stoppage and with seeking emergency medical treatment, her claim of a traumatic injury due to "cleaning (bending), mopping and washing bathroom walls" is not consistent with the histories provided by

¹ *Elaine Pendleton*, 40 ECAB 1143 (1989).

² *John J. Carlone*, 41 ECAB 354 (1989).

³ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁴ *Delphyne L. Glover*, 51 ECAB 146-48 (1999).

Dr. Dawson, who recorded a slip with a grasping of an object, or by Dr. Kahn, who indicated that appellant's injury occurred as a slip without a fall.

Due to the inconsistencies of the factual evidence of record, appellant has not established that the claimed incident occurred as alleged. Therefore, she failed to meet her burden of proof in establishing that she sustained an injury as alleged on June 24, 2004. The Board finds that the Office properly denied her claim.

CONCLUSION

The Board finds that appellant failed to provide a consistent history of injury occurring on June 24, 2004 and resulting in the diagnosed conditions of record. Appellant has failed to meet her burden of proof in establishing an injury in the performance of duty and the Office properly denied her claim.

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2005 and August 27, 2004 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: November 15, 2005
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

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