

on June 26, 2004 at 6:00 p.m. On the supervisor's portion of the claim form, Mary Harbison stated, "[c]lerks working with subject not aware of any accident. Accident not investigated or substantiated since it was not reported." Appellant stopped work on June 30, 2004.

In an undated statement accompanying her claim, appellant asserted that on June 26, 2004 she and Larry Jenkins were working in her work unit and that she was lifting tubs of mail weighing 30 to 60 pounds and handling mail trays weighing 5 to 17 pounds. She indicated that after she lifted a tub of mail out of a cart and twisted towards a preparation table, she felt a pain in her knee and thought she had twisted her knee. Appellant asserted that she walked on her knee "a little" and thought it would "be fine" and indicated that she performed four hours of essentially sedentary work for the remainder of her shift. She claimed that she rested her injury on June 27, 2004 and worked while limping on June 28 and 29, 2004 and asserted that on June 30, 2004 appellant told Ms. Harbison that she "hurt my knee somehow." Appellant stated that on July 1, 2004 Dr. Bernard Pare, an attending physician specializing in family practice, advised her that she had an HNP of a lumbar disc and told her "my back was the one that was hurt but since it is all connected my knee was affected."¹

Appellant submitted a form report dated July 7, 2004, in which Dr. Pare indicated that she reported a June 26, 2004 injury which involved "turning, sorting mail, pulled back" and that she had an HNP of a lumbar disc due to the injury. In a July 8, 2004 physical therapy report, it was indicated that she complained of acute onset of low back pain with left lower extremity symptoms due to bending forward to pick up mail flats.

In a letter dated July 15, 2004, Randall Wilson, an injury compensation specialist for the employing establishment, asserted that appellant originally claimed to have injured her knee at work on June 26, 2004 rather than her back, that she did not report the injury until June 30, 2004 and that she did not file a claim until July 1, 2004. Mr. Wilson noted that she worked 10 hours on June 28, 2004 and 8 hours on June 29, 2004 and stated, "[a]t no time during these two days did she report to her supervisor that she was injured or that anything was hurting her. Appellant also told one of her coworkers, whose statement is attached, that she had knee problems all her life."²

In an undated document, an employing establishment official indicated that appellant called on June 30, 2004 to request a nonscheduled day to go to a physician for a swollen knee, but that she did not indicate that the condition was employment related. The official indicated that June 27, 2004 was a nonscheduled day and that she worked 8 hours on June 26, 2004, 10 hours on June 28, 2004 and 8 hours on June 29, 2004. The official asserted that appellant called

¹ In a July 12, 2004 statement, Mr. Jenkins indicated that on June 26, 2004 appellant did not mention sustaining an injury and that he did not notice that an injury occurred.

² In a statement dated July 8, 2004, a coworker asserted that she observed appellant limping at work on June 29, 2004 and she stated that her knee was bothering her and that "she basically had this problem all her life." The coworker indicated that appellant also stated that her wrist or hand was painful and locked up on her and that a physician told her she had tendinitis.

on July 1, 2004 to have a Form CA-1 sent to her address for a back injury which was sustained at work on June 26, 2004.³

By letter dated July 27, 2004, the Office requested that appellant submit additional factual and medical evidence in support of her claim.

Appellant submitted an undated form report in which Dr. Pare listed her history of injury as “pulling back, turning, doing mail” and checked a box indicating that her HNP of a lumbar disc was due to this injury. Dr. Pare stated that he first saw her on July 1, 2004 and that she should perform light-duty work. In a form report dated August 5, 2005, Dr. Pare listed appellant’s history of injury on June 26, 2004 as “moving tub of mail -- twisted -- pain in knee, HNP lumbar.” In a report dated August 19, 2004, Dr. Pare stated that appellant reported that on June 16, 2004 “while doing mail she turned and pulled her back.” He stated, “[s]he thought it was her leg but soon realized it was her back causing the problem” and indicated that his findings included paraspinal spasm, left leg muscle weakness, loss of left patellar reflex and limited range of motion of the left spine.⁴ The record also contains physical therapy notes for the period July 20 to August 9, 2004, which indicated that appellant complained of both low back and left lower extremity symptoms.

By decision dated September 17, 2004, the Office denied appellant’s claim that she sustained an injury in the performance of duty on June 26, 2004. The Office found that she did not demonstrate that a specific event, incident or exposure occurred at the time, place and in the manner alleged.

On October 17, 2004 appellant requested an oral hearing before an Office hearing representative.⁵ By letter dated March 30, 2005, the Office advised appellant of the time and place of a hearing to be held on May 3, 2005.⁶

By decision dated May 12, 2005, the Office determined that appellant abandoned her request for an oral hearing before an Office hearing representative. The Office stated that she did not appear for the scheduled May 3, 2005 hearing and did not contact the Office prior to or subsequent to the hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees’ Compensation Act⁷ has the burden of establishing the essential elements of her claim, including the fact that the individual is

³ It was indicated that appellant worked between 3:00 p.m. and 11:30 p.m. on June 26, 2004.

⁴ The record also contains notes in which Dr. Pare treated appellant’s asthma and other conditions not relevant to the present claim.

⁵ Appellant submitted September 17, 2004 reports of Dr. Son D. Le, an attending physician Board-certified in physical medicine and rehabilitation.

⁶ The letter was sent to appellant’s current address.

⁷ 5 U.S.C. §§ 8101-8193.

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.⁸ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the “fact of injury” has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.¹⁰ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.¹¹ The term “injury” as defined by the Act, refers to some physical or mental condition caused by either trauma or by continued or repeated exposure to or contact with, certain factors, elements or conditions.¹²

An employee must show the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.¹³ An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an 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.¹⁴ An employee has not met her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹⁵ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee’s statements in determining whether a *prima facie* case has been established.¹⁶ However, an employee’s

⁸ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

¹⁰ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

¹¹ *John J. Carlone*, 41 ECAB 354, 356-57 (1989); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

¹² *Elaine Pendleton*, *supra* note 8; 20 C.F.R. § 10.5(a)(14).

¹³ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

¹⁴ *Charles B. Ward*, 38 ECAB 667, 670-71 (1987); *Joseph Albert Fournier, Jr.*, 35 ECAB 1175, 1179 (1984).

¹⁵ *Tia L. Love*, 40 ECAB 586, 590 (1989); *Merton J. Sills*, 39 ECAB 572, 575 (1988).

¹⁶ *Samuel J. Chiarella*, 38 ECAB 363, 366 (1987); *Henry W.B. Stanford*, 36 ECAB 160, 165 (1984).

statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁷

ANALYSIS -- ISSUE 1

Appellant filed a claimed alleging that she sustained a back injury in the performance of duty on June 26, 2004. By decision dated September 17, 2004, the Office denied her claim on the grounds that she did not demonstrate that a specific event, incident or exposure occurred at the time, place and in the manner alleged.

The Board finds that appellant established the occurrence of an employment incident on June 26, 2004. The Board notes that there are not such inconsistencies in the evidence as to cast serious doubt upon the validity of appellant's claim. Appellant consistently alleged that she sustained an employment injury on June 26, 2004 when she lifted a heavy tub of mail out of a cart and twisted to place it on a table. Although she initially indicated that she felt that she primarily had knee problems,¹⁸ appellant explained that she realized within a few days that her most severe problems related to her low back. Appellant explained that she delayed reporting the June 26, 2004 injury and seeking medical treatment for a few days because she initially felt that the injury was not that serious and that she could work through it. Appellant indicated that she rested her injury on June 27, 2004 and worked while limping on June 28 and 29, 2004 and the record reflects that she sought medical treatment on July 1, 2004 with Dr. Pare, an attending physician specializing in family practice. Although the reports of Dr. Pare contain slight variations on the history of appellant's June 26, 2004 injury, they essentially indicate that she alleged that she lifted mail and twisted her body on that date and experienced low back and knee pain.¹⁹ Appellant's account of her work on June 2004 is not refuted by strong or persuasive evidence and, therefore, she has shown that she experienced an employment factor on June 26, 2004 in the form of lifting a heavy tub of mail out of a cart and twisting to place it on a table.

The Board further finds that, although appellant established the occurrence of an employment incident on June 26, 2004 she did not submit sufficient medical evidence to show that she sustained a medical condition due to this incident.

Appellant submitted a July 7, 2004 report in which Dr. Pare indicated that she reported a June 26, 2004 injury which involved "turning, sorting mail, pulled back" and that she had an HNP of a lumbar disc due to the injury. This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Pare did not provide adequate medical rationale in support of his conclusion on causal relationship.²⁰ He did not describe the accepted employment

¹⁷ *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

¹⁸ The record indicates that she reported to a supervisor on June 30, 2004 that she sustained a knee injury at work on June 26, 2004.

¹⁹ In a form report dated August 5, 2005, Dr. Pare listed appellant's history of injury on June 26, 2004 as "moving tub of mail -- twisted --pain in knee, HNP lumbar."

²⁰ See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

incident in any detail or explain the medical process through which it could have been competent to cause appellant's back injury. Dr. Pare's report contains no findings on examination or diagnostic testing and it remains unclear why he felt that appellant had an HNP of a lumbar disc. Appellant submitted an undated form report in which Dr. Pare listed her history of injury as "pulling back, turning, doing mail" and checked a box indicating that her HNP of a lumbar disc was due to this injury. However, this report does not list a date of injury and it contains the same deficiencies regarding its opinion on causal relationship as Dr. Pare's July 7, 2004 report.

In a report dated August 19, 2004, Dr. Pare stated that appellant reported that on June 16, 2004 "while doing mail she turned and pulled her back." He stated, "She thought it was her leg but soon realized it was her back causing the problem" and indicated that his findings included paraspinal spasm, left leg muscle weakness, loss of left patellar reflex and limited range of motion of the left spine. However, Dr. Pare did not provide any opinion in this report that the reported findings were due to the June 26, 2004 employment incident.²¹

Because appellant did not show that she sustained a medical condition due to the accepted employment incident, she did not establish that he sustained a back injury in the performance of duty on June 26, 2004.

LEGAL PRECEDENT -- ISSUE 2

The authority governing abandonment of hearings rests with the Office's procedure manual. Chapter 2.1601.6(e) of the procedure manual, dated January 1999, provides as follows:

"e. Abandonment of Hearing Requests.

"(1) A hearing can be considered abandoned only under very limited circumstances. All three of the following conditions must be present: the claimant has not requested a postponement; the claimant has failed to appear at a scheduled hearing; and the claimant has failed to provide any notification for such failure within 10 days of the scheduled date of the hearing.

"Under these circumstances, Branch of Hearings and Review will issue a formal decision finding that the claimant has abandoned his or her request for a hearing and return the case to the district [O]ffice]. In cases involving preresoupment hearings, Branch of Hearings and Review will also issue a final decision on the overpayment, based on the available evidence, before returning the case to the [district Office].

"(2) However, in any case where a request for postponement has been received, regardless of any failure to appear for the hearing, Branch of Hearings and Review should advise the claimant that such a request has the effect of converting the format from an oral hearing to a review of the written record.

²¹ See *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (finding that medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

“This course of action is correct even if Branch of Hearings and Review can advise the claimant far enough in advance of the hearing that the request is not approved and that the claimant is, therefore, expected to attend the hearing and the claimant does not attend.”²²

ANALYSIS -- ISSUE 2

The Office scheduled an oral hearing before an Office hearing representative at a specific time and place on May 3, 2005. The record shows that the Office mailed appropriate notice to the claimant at her last known address. The record also supports that appellant did not request postponement, that she failed to appear at the scheduled hearing and that she failed to provide any notification for such failure within 10 days of the scheduled date of the hearing. As this meets the conditions for abandonment specified in the Office’s procedure manual, the Office properly found that appellant abandoned her request for an oral hearing before an Office hearing representative.²³

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on June 26, 2004. The Board further finds that the Office properly determined that appellant abandoned her request for an oral hearing.

²² Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(e) (January 1999).

²³ See also *Claudia J. Whitten*, 52 ECAB 483, 485 (2001).

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' May 12, 2005 and September 17, 2004 decisions are affirmed.

Issued: November 3, 2005
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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