



By letter dated March 28, 2005, the Office advised appellant that she needed to submit additional information in support of her claim. The Office requested factual evidence which would corroborate her account of the events which occurred on February 19, 2005 and medical evidence, including a physician's opinion as to the causal relationship between a diagnosed condition and the alleged events. The Office stated that appellant had 30 days to submit the requested information.

Appellant submitted return to work instructions from Providence Hospital emergency room dated February 19, 2005 and signed by Dr. Jayesh Patel, an emergency room physician, indicating that she was restricted to desk duty until she was rechecked on February 21, 2005. A February 19, 2005 employing establishment referral form showed that appellant had presented to the health unit with pain and swelling of her left calf, which she had struck against a wheel chair. February 19, 2005 urgent care progress notes electronically signed by Dr. Berhane Seyoum, a treating physician, reflected her statement that she had "struck her left leg (calf muscle) against a wheel chair;" findings that appellant had a slightly swollen and tender left calf muscle, that her peripheral pulses were fine and that her left calf was larger by one centimeter than her right calf; and a diagnosis of "[RO rule out] muscle bleed." A February 24, 2005 vascular lab consult response reflected that she was "negative for any evidence of DVT [deep vein thrombosis] to the LLE's [left lower extremities] deep and superficial venous system."<sup>1</sup>

Appellant submitted progress notes dated February 24, 2005 and cosigned electronically on February 28, 2005 by Thresiamma Idichandy, nurse practitioner, and Dr. Ramesh Padiyan, a treating physician.<sup>2</sup> She reported a history that her left leg hit the foot pedal of a wheel chair while she was helping a patient to the bathroom on February 19, 2005 but that she did not know the exact spot on her leg where the injury occurred. Appellant indicated that her left leg had been swollen for a week, but the report notes that her alleged injury had occurred only five days earlier. The report reflected that her left leg was shiny and swollen from her knee to her ankle; that she walked with a limp; and that there was no redness, tenderness or bruising noted. The report reflected the opinion of Dr. Padiyan and Nurse Idichandy that the swelling was due to an illness rather than to the alleged injury.

In a report dated March 11, 2005, Dr. Leon Crumley, a Board-certified internist, provided diagnoses of multiple rupture of lumbar discs with acute sciatica C3; severe osteoarthritis left hip; and uncontrolled hypertension. An accompanying undated and unsigned duty status report reflected that appellant "struck [her] leg against [a] wheel chair." She also submitted an April 14, 2005 duty status report, in which Dr. Mick Perez-Cruet, a treating physician, reported clinical findings of lumbar stenosis spondylolisthesis.<sup>3</sup>

---

<sup>1</sup> The form reflects that it was electronically signed by Dr. Sandra Lee Liebau on March 3, 2005, however, no such signature appears on the form.

<sup>2</sup> Dr. Padiyar is "Chief, Administrative Medicine," however, his credentials cannot be verified.

<sup>3</sup> Dr. Miguelangelo J. Perez-Cruet of Chicago, Illinois is Board-certified in neurological surgery, however, the Board is unable to verify the credentials of Dr. "Mick" Perez-Cruet of Southfield and Pontiac, Michigan.

By letter dated April 22, 2003, the employing establishment asserted that appellant made inconsistent and inaccurate statements regarding her alleged injury. The employing establishment noted that there were suspicious circumstances regarding her alleged injury and a lack of medical documentation to support her claim.

By decision dated May 3, 2005, the Office denied appellant's claim, finding that she failed to establish the fact of injury. The Office found that the evidence she submitted was insufficient to establish that the February 19, 2005 incident occurred as alleged. The Office also found that appellant failed to submit medical evidence containing a diagnosis which could be connected to the claimed incident.<sup>4</sup>

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>5</sup> 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."<sup>6</sup>

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of her claim. When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," to wit: she must submit sufficient evidence to establish that 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.<sup>7</sup>

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 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

---

<sup>4</sup> The Board notes that the record on appeal contains additional evidence which was not before the Office at the time it issued its May 3, 2005 decision. The Board's jurisdiction is limited to reviewing the evidence that was before the Office at the time of its final decision. Therefore, the Board has no jurisdiction to review this evidence for the first time on appeal. See 20 C.F.R. § 501.2(c). See also *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36n.2 (1952).

<sup>5</sup> 5 U.S.C. § 8102(a).

<sup>6</sup> 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).

<sup>7</sup> *Betty J. Smith*, 54 ECAB \_\_\_\_ (Docket No. 02-149, issued October 29, 2002); see also *Tracey P. Spillane*, 54 ECAB \_\_\_\_ (Docket No. 02-2190, issued June 12, 2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101 (5). See 20 C.F.R. § 10.5(q), (ee).

doubt on a claimant's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>8</sup>

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.<sup>9</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere 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.<sup>10</sup>

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.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has not established the fact of injury due to inconsistencies in the evidence that cast serious doubt as to whether the specific traumatic incident occurred at the time, place and in the manner alleged. She alleged in her March 18, 2005 claim form that the injury occurred when she fell backward against a wheel chair, twisting her lower back and exacerbating the sciatic nerve to her left lower leg. However, the contemporaneous medical evidence does not support that appellant fell on February 19, 2005 or sustained any back condition. On the contrary, the medical evidence of record reflects that appellant represented on that date to both the employing establishment and treating medical professionals that she struck her left calf against a wheel chair, resulting in a slightly swollen and tender left calf muscle. Five days later she told Dr. Ramesh Padiyan and a nurse practitioner that her left leg had hit the foot pedal of a wheel chair while she was helping a patient to the bathroom and that her left leg had been swollen for a week. Dr. Padiyan's notes reflected his opinion that the swelling in appellant's leg was due to illness rather than to the alleged injury. Having consistently reported that the February 19, 2005 injury was caused by striking her left calf against a wheel chair, appellant alleged in her CA-1 claim form, which was filed a month after the alleged injury, that she fell backward and twisted her lower back. This contradictory evidence creates uncertainty as

---

<sup>8</sup> *Juanita Pitts*, 56 ECAB \_\_\_\_ (Docket No. 04-1527, issued October 28, 2004). See also *Betty J. Smith*, *supra* note 7.

<sup>9</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>10</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>11</sup> *John W. Montoya*, 54 ECAB \_\_\_\_ (Docket No. 02-2249, issued January 3, 2003).

to the time, place and the manner in which she experienced an incident at work on February 19, 2005. Moreover, the delay in the filing of her claim casts doubt on its credibility.

Dr. Crumle's March 11, 2005 report provided diagnoses of multiple rupture of lumbar discs with acute sciatica C3; severe osteoarthritis left hip; and uncontrolled hypertension. While an accompanying undated and unsigned duty status report reflected that appellant "struck [her] leg against [a] wheel chair, "he did not provide any explanation as to how her newly diagnosed condition was in any way related to the alleged February 19, 2005 work-related injury, nor did he address the history of the alleged injury. Similarly, Dr. Perez-Cruet's April 14, 2005 duty status report, which reported clinical findings of lumbar stenosis spondylolisthesis, did not address a history of a lower back injury or explain a connection between the diagnosed condition and the alleged work-related injury. There is no medical evidence of record that corroborates appellant's allegation that she twisted her lower back on February 19, 2005 or that her alleged injury exacerbated a long-standing medical condition.

Appellant's failure to submit sufficient evidence to explain the discrepancies in her case casts doubt on her assertion that she injured her lower back on February 19, 2005, as alleged. The Office requested that she submit additional factual and medical evidence explaining how she injured her lower back on that date. Appellant failed to submit such evidence. Given the inconsistencies in the evidence regarding how she sustained her injury, the Board finds that evidence submitted was insufficient to establish the fact of injury or to establish that she sustained a traumatic incident in the performance of duty as alleged.<sup>12</sup>

### **CONCLUSION**

Appellant has failed to meet her burden of proof in establishing that she sustained an injury in the performance of duty.

---

<sup>12</sup> See *Mary Joan Coppolino*, 43 ECAB 988 (1992). See also *Matthew B. Copeland*, 6 ECAB 398, 399 (1953) (where the Board found that discrepancies and inconsistencies in appellant's statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 3, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 1, 2005  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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