



previous broken rib injury. She subsequently alleged that a cart had hit her and aggravated her previous injury. Ms. Lasker noted that appellant's alleged injury of a cart striking her in the back was not reported within 30 days following the injury.

By letter dated September 26, 2005, the Office advised appellant of the information required to establish a claim for either a traumatic injury or an occupational disease. It requested that she submit additional factual and medical evidence in support of her claim.

In an undated statement, appellant described her work duties as involving the preparation, delivery and serving of thermal carts and steam tables together with the other various clean-up and miscellaneous duties. In a September 20, 2005 Initial Claim Report for Disability Insurance, appellant indicated that July 20, 2005 was the last day she worked in her date-of-injury position and that she had returned to restricted work for four hours a day on September 7, 2005 lining trays for the tray line and assisting her supervisor with computer and paperwork. The report also contained a diagnosis of thoracic muscle strain from Dr. Alison E. Dietrich, a Board-certified family practitioner, who reported that appellant's symptoms began in May 2005 and resolved on September 20, 2005.

In a July 19, 2005 return to work note, Linda Henriksen, a registered nurse practitioner, stated that appellant had a right side rib cartilage contusion and was restricted from lifting until August 20, 2005.

In an August 29, 2005 report of employee's emergency treatment, Michael Harvey, a physician's assistant, stated that appellant had a rib cartilage/contusion and was able to return to work according to her primary care physician on August 20, 2005.

In a September 30, 2005 return to work note, Dr. Kenneth S. Lee, a Board-certified internist, stated that appellant had a "right fifth rib fracture in past aggravated by heavy lifting in general." He advised that appellant was restricted from heavy lifting and needed to switch departments at work. In an October 15, 2005 Form OWCP-5c, work capacity evaluation form, Dr. Lee stated that appellant was able to perform her usual position with restrictions.

By decision dated November 3, 2005, the Office denied appellant's claim finding that fact of injury was not established as she failed to establish the June 6, 2005 incident in her traumatic injury claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>1</sup> has the burden of establishing the essential elements of his or her claim including the fact that the individual is 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.<sup>2</sup> These are the essential

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<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>3</sup>

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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>4</sup> 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.<sup>5</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 his or 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 sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>6</sup>

### ANALYSIS

Appellant alleged that she sustained an injury to her ribs at work on June 6, 2005 after being struck by a cart on that date and to work duties of "assessing, pushing and pulling" of food carts. The Office denied her claim on the basis that she failed to establish that the incident on June 6, 2005 occurred as alleged.<sup>7</sup>

The Board finds that appellant has not established that she actually experienced the June 6, 2005 employment incident at a given time, place or in the manner alleged. Appellant did not provide any specifics regarding the alleged June 6, 2005 incident and there is no evidence of record to support her claim that she was struck by a food cart on that date. She did not promptly file her claim nor did she seek prompt medical treatment. Dr. Dietrich, on September 20, 2005, diagnosed a thoracic muscle strain for which symptoms first began in May 2005. This is prior to the claimed event of June 6, 2005. Additionally, Dr. Dietrich provided no history of injury of the

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<sup>3</sup> *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB \_\_\_\_ (Docket No. 05-715, issued October 6, 2005); *Delores C. Ellyett*, 41 ECAB 992, 998-99 (1990); *Ruthie M. Evans*, 41 ECAB 416, 423-27 (1990).

<sup>4</sup> *Donna A. Lietz*, 57 ECAB \_\_\_\_ (Docket No. 05-1758, issued October 27, 2005); *Alvin V. Gadd*, 57 ECAB \_\_\_\_ (Docket No. 05-1596, issued October 25, 2005); *David Apgar*, 57 ECAB \_\_\_\_ (Docket No. 05-1249, issued October 13, 2005).

<sup>5</sup> *Alvin V. Gadd, id.*; *Elaine Pendleton*, *supra* note 2; 20 C.F.R. § 10.5(a)(14).

<sup>6</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>7</sup> The Board notes that the Office had advised appellant of the occupational aspects of her claim. As appellant did not identify any employment factors as causing or contributing to her claimed condition, the Office adjudicated appellant's claim as that of a traumatic injury.

alleged incident or explained the circumstances under which the diagnosed condition arose. The other evidence of record submitted fails to establish that appellant was struck by a food cart on the date alleged. Appellant was provided an opportunity to perfect the factual aspect of a traumatic injury claim but she failed to do so. She has not established that the incident had occurred as alleged as there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.

The Board finds that appellant's assertion that she was struck by a food cart on June 6, 2005 is unsubstantiated. Because appellant has not established the factual aspect of a traumatic injury claim, it is not necessary for the Board to consider the medical evidence of record.<sup>8</sup>

### **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 6, 2005.

### **ORDER**

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

Issued: August 14, 2006  
Washington, DC

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

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

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<sup>8</sup> *Alvin V. Gadd, supra* note 4.