



to being released from recovery. The claim form was signed by appellant on December 10, 2004 and the employing establishment received the form on March 23, 2005. The employing establishment controverted the claim.

By letter dated April 7, 2005, the Office requested that appellant submit evidence in support of her claim.

In a statement received by the Office, on April 14, 2005, the employing establishment noted that appellant filed a previous claim which had been denied twice. Based on the filing of the previous claim, appellant had surgery on October 1, 2004. Six weeks of leave under the Family and Medical Leave Act (FMLA) was approved to recover from the surgery. Appellant returned to work on November 15, 2005. On December 3, 2005 she provided the employing establishment with a medical statement that she would be returning to work on January 31, 2005. Appellant was furloughed for two weeks in December 2004 and then returned to a nonpay status under the FMLA on January 9, 2006. She was under FMLA leave until February 15, 2005. Appellant returned to duty on March 31, 2005. At that time, her supervisor requested further medical documentation and instructed her not to lift any boxes in the area.

By decision dated May 19, 2005, the Office denied appellant's claim. It noted that she did not establish that the alleged incident occurred and that the medical evidence did not provide a diagnosis which could be connected to November 17, 2004. On June 3, 2005 appellant requested an oral hearing.

Appellant submitted the results of a magnetic resonance imaging (MRI) scan conducted on June 28, 2004 and medical reports by Dr. Steven P. Disch, a Board-certified neurosurgeon, dated from July 1 to October 21, 2004. The MRI scan revealed a ruptured disc at C5-6 and C6-7, which was moderate in nature. Appellant underwent surgery and, pursuant to the Dr. Disch's October 21, 2004 report, her wound was healing nicely and her radicular pain had improved. In a "Certification of Health Care Provider" from Dr. Disch, dated September 14, 2005, it was noted that appellant would undergo surgery on October 1, 2004 and was not to work until January 2005.

At the hearing held on February 22, 2006 appellant indicated that her injury occurred on November 17, 2004. She turned her head repeatedly as her papers were on her left side and her computer was on her right side. Appellant had to pull records that weighed anywhere from 35 to 40 pounds. She promptly notified her supervisor by a telephone message of the incident. Appellant noted that this was shortly after she returned to work following surgery. She indicated that her doctor had not released her to return to work but that her supervisor stated that, if she did not return, disciplinary action would be taken.

Additional medical information was submitted. Appellant was seen in the emergency room at Emory Dunwoody Medical Center on December 1, 2004 at which time she complained of neck pain. She had a cervical spine series conducted that date which was interpreted as showing no acute fracture, degenerative disc disease at C4-5 and interval anterior cervical fusion at C5-6 and C6-7. In a December 21, 2004 progress note, Dr. Disch indicated that appellant had mild spasm over her neck.

Pursuant to a settlement agreement with regard to an internal investigation, appellant agreed to resign from the employing establishment on July 5, 2005.

By decision dated May 8, 2006, the hearing representative affirmed the denial of appellant's claim. The factual and medical evidence did not substantiate that she sustained an injury in the performance of duty at the time, place and in the manner alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act 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 filed within the applicable time limitation 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>1</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>2</sup>

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>3</sup> In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>4</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and the circumstances and her subsequent course of action.<sup>5</sup> A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.<sup>6</sup> 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.<sup>7</sup> Although an employee's

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<sup>1</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>2</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>3</sup> *Elaine Pendleton*, *supra* note 1.

<sup>4</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>5</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>6</sup> *Id.* at 255, 256.

<sup>7</sup> *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

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,<sup>8</sup> an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.<sup>9</sup> The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>10</sup> The medical 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 failed to establish that the claimed incident of November 17, 2004 occurred as alleged. The Board notes that the claim form indicates that appellant signed the document on December 10, 2004. However, notice was not received by the employing establishment until over three months later on March 23, 2005. There are no statements corroborating appellant's claim that the incident occurred, despite her statements that she promptly informed her supervisor of the incident. There is no record that appellant saw a physician until the December 1, 2004 emergency room visit and there is no notation in the emergency room notes of any injury that occurred on November 17, 2004. The medical reports do not contain any description that appellant injured herself by the constant jerking and pulling of her head during her federal employment. These discrepancies cast serious doubt on appellant's claim that the injury occurred as alleged.<sup>12</sup> Appellant has not met her burden of proof in establishing this element of fact of injury.

As noted there is no notation in the emergency room notes from December 1, 2004 that appellant injured herself while twisting her neck at work on November 17, 2004. Furthermore, Dr. Disch did not mention the alleged November 14, 2004 incident in his December 21, 2004 progress note. Accordingly, appellant has failed to establish fact of injury. Her claim was properly denied.

### CONCLUSION

The Board finds that appellant has not established that she sustained an injury on November 17, 2004, as alleged.

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<sup>8</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>9</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>10</sup> *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>11</sup> *Louis T. Blair, Jr.*, 54 ECAB 306, 308 (2003).

<sup>12</sup> *Joseph A. Fournier*, *supra* note 9.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 8, 2006 is affirmed.

Issued: December 26, 2006  
Washington, DC

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

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

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board