

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**SAMUEL V. GARCIA, Appellant**

**and**

**FEDERAL BUREAU OF PRISONS, Milan, MI,  
Employer**

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**Docket No. 05-1796  
Issued: February 13, 2006**

*Appearances:*  
*Paul Kullen, Esq.,*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On August 30, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decisions dated November 10, 2004 and April 5, 2005 which found that he failed to establish that he sustained an injury as alleged. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits in this case.

**ISSUE**

The issue is whether appellant has met his burden of proof in establishing that he sustained an injury in the performance of duty.

**FACTUAL HISTORY**

On October 29, 2003 appellant, then a 31-year-old corrections officer, filed a traumatic injury claim alleging that he sustained injury on October 12, 2003 in the performance of duty. He alleged that he injured his back and left leg due to job duties in "A unit" and in the "visiting room/inmate processing area." Appellant stopped work on October 12, 2003. The employing establishment noted that he alleged that a "fall may have aggravated a previous injury."

In an October 12, 2003 memorandum, appellant alleged that, after returning to work for three months,<sup>1</sup> he began to have back and leg pain and developed tingling and numbness in his left leg which he believed would cause him to return to his prior disability status. The pain and numbness progressed after October 9, 2003. Appellant alleged that, on October 13, 2003, he fell after his “leg gave out due to back problems and a weakened left leg.” He noted that two individuals, identified as Downing and Durkee, saw him fall. In an October 13, 2003 statement, appellant noted that his physical status had deteriorated since his previous work-related injury. He explained that, on October 9, 2003, he began to feel his leg weaken. Appellant alleged that, on Sunday, he assisted in the visiting room, and fell because of his leg.

In an October 18, 2003 statement,<sup>2</sup> Lieutenant David Downing, a coworker, advised that, on October 12, 2003 at approximately 2:00 p.m., he was in the visiting room attending to a situation involving an inmate and a visitor. He noted that appellant was standing behind him and leaning on his left leg, and “fell back on his hands and fanny (definitely not a hard fall).” Mr. Downing explained that he “scooped” up appellant and helped him to a chair. Appellant explained that he had a “bad back which caused his left leg to become weak and his knee just kind of gave out.”<sup>3</sup>

In an October 22, 2003 statement, appellant advised that he was correcting two items, noting that the date of the incident was October 12, 2003 and not October 13, 2003. He explained that the errors occurred as he was in pain when the reports were made. Appellant included a separate statement describing symptoms of back and leg pain on October 9, 2003 which began after he began to lift, twist and walk up stairs. On October 12, 2003 he attempted to secure the second entrance door leading from the yard to the inmate processing area, when he began to experience pain in his back and left leg. Appellant reported this to his supervisors but continued to work. His condition worsened, after stepping up and down from the officer’s podium. Appellant later fell after his leg buckled.

In a November 5, 2003 report, Thomas Carmichael, Sr., an employing establishment manager, advised that appellant experienced back and leg pain on October 9, 2003 which was “not due to anything but his left leg, which began to quiver and it buckled.” He noted that appellant related that “before the fall he knew he might have to go back on disability due to his agonizing pain he was feeling for the last three days.”

Appellant submitted an emergency room discharge sheet dated October 12, 2003, in which Dr. James Blon, a physician of unidentified specialty, diagnosed a disc bulge.

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<sup>1</sup> The record reflects that appellant had a work-related injury under case No. A9-2040428, which was accepted for a herniated disc at L3-4 and subsequent surgery. The record also reflects that appellant returned to full duty on August 23, 2003. The Office doubled the two claims under case No. A9-2025388.

<sup>2</sup> The record also contains an October 13, 2003 statement from Mr. Downing, with the same contents.

<sup>3</sup> The record also contains a memorandum dated October 13, 2003, addressing the incident which Mr. Downing described; however, it is unclear who the memorandum was from.

In an October 15, 2003 report, appellant's treating physician, Dr. Douglas F. Geiger, a Board-certified orthopedic surgeon, noted treating appellant for left leg pain. He advised that five days earlier appellant had a "spontaneous onset of increasing pain involving his left buttock and left lower extremity." Appellant related that he was required to do a lot of climbing of stairs, walking and twisting at work and felt that this exacerbated his back condition. He had an episode in which his left knee buckled and gave way. Dr. Geiger diagnosed a recurrent disc herniation at the L3-4 level with left lower extremity pain.

By letter dated February 2, 2004, the Office advised appellant that additional factual and medical evidence was needed.

On February 19, 2004 appellant's attorney alleged that the claim was related to several factors including his prior accepted work injury. On October 9, 2003 appellant noticed left leg weakness while he walked on the job, and worked in a cell block where inmates were transferred to other areas. He explained that appellant had to pack and move inmate belongings from one location to another and that appellant had to bend and twist repetitively to pack items and then lift and carry the heavy boxes and bags to the officer's office. Counsel stated that appellant lifted a heavy barrel of floor wax onto a table. Appellant rested his back and left leg for two days and returned to work on October 12, 2003. On this date, appellant secured an entrance, which included opening and closing a gate that was "very heavy and dragged heavily on the floor when moved." Counsel stated that appellant strained to move the gate and developed severe lower back and left leg pain and collapsed later that day.

By decision dated March 15, 2004, the Office denied appellant's claim finding that he did not submit sufficient medical evidence in support of his claim. The Office advised appellant that his claim was being treated as an occupational disease claim as opposed to a traumatic injury claim, as he claimed work events occurring over more than one work shift.

Appellant requested reconsideration and submitted reports from Dr. Geiger and Dr. Matthew W. Smuck, a Board-certified physiatrist, contending that these reports supported that his current condition was causally related to his previously accepted injury.<sup>4</sup>

By letter dated April 7, 2004, Mr. Carmichael controverted the claim. He alleged that unit officers told inmates "where to move" and did not help them with the move. Mr. Carmichael also noted that there was "no log of any inmate(s) moving from A Unit on that day during [appellant's] shift." He advised that there was only one exception regarding assisting inmates and packing their property and it did not apply during the 24 hours before, during or after appellant's shift. Mr. Carmichael also addressed appellant's claim regarding moving a barrel of floor wax, and noted that all wax at the facility was contained in one gallon jugs, which weighed 8.54 pounds. He stated that the doors which appellant had to open in the visiting room were electronic doors that opened when a button was pushed and popped out without effort and

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<sup>4</sup> In a February 27, 2004 report, Dr. Geiger, opined that appellant had a disruption at L3-4 that resulted from the injury sustained at work in August 2002 and which caused further disc deterioration, a *cauda equine* syndrome, requiring surgery, and a recurrent disc herniation secondary to the injury sustained on "August 9 and 12, 2002." In a March 3, 2004 report, Dr. Smuck, opined that appellant's symptoms of pain and weakness of the left leg in October 2003 were a direct result of the injury he sustained to his back in August 2002.

did not drag on the floor. The other door was the inmate entrance from the shake down room. Mr. Carmichael explained that this door was checked for malfunctioning on a daily basis and that there were no door problems listed on the daily security inspection report. Regarding appellant's fall, he stated that the staff that was present indicated that appellant did not fall as stated, but "sat back down to the floor and needed assistance in getting up."

By decision dated June 24, 2004, the Office modified the March 15, 2004 decision to find that new evidence presented by the employing establishment refuted that the incidents alleged by appellant, occurred as alleged. The Office found that the factual evidence given by appellant was not consistent with the surrounding circumstances and there were discrepancies in his statements.

By letter dated September 14, 2004, appellant requested reconsideration and submitted a statement and a diagram which explained how he was injured.

Appellant explained that on October 9, 2003 he was directed to remove two heavy bags of inmate property that had been left by a previous unit officer. He picked up the bags and gave them to an A-corridor officer a half-hour later. After lifting the second bag, his back tightened. Appellant explained that he called the wax jugs "barrels" and that he had lifted them onto a table inside the staff office for access to inmate cleaning liquids. He alleged that they contained a red/pinkish liquid and they were medium sized. Appellant worked in the visiting room on October 12, 2003 and was responsible for opening and closing the door in question. He worked through mid-morning and went to close the difficult door which became very hard to close at which point he forced it shut. At this time, appellant experienced a burning feeling in his back and leg. He stated that he "toughed it out" for the rest of his shift even though his symptoms intensified. At the end of his shift, appellant was standing to help the visitors leave when his left leg became very weak causing him to fall down on his side with his left hand positioned to break his fall. He alleged that he was forced to leave work 15 minutes prior to his shift ending and drove to an emergency room.

The Office also received several reports from Drs. Smuck and Geiger, from October 15, 2003 to July 27, 2004 related to follow-up treatment for appellant's *cauda equine* syndrome.<sup>5</sup> Also received were numerous medical records pertaining to treatment of appellant's prior accepted condition and subsequent condition.

By letter dated October 22, 2004, Mr. Carmichael noted that there were specific procedures in place for properly handling inmate property. He explained that the unit log book for the period in question, was examined, which appellant was required to fill out, and there was no entry from appellant concerning his handling of property on October 9, 2003.

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<sup>5</sup> In an October 17, 2003 report, Dr. Smuck advised that appellant related that he returned to work full time for nearly two months when he had pain and weakness in the left leg and foot while walking up stairs on October 9, 2003 near the end of his shift. He related that appellant awakened the next morning with cramping and shooting pain in the left back down to the left knee. Dr. Smuck noted that appellant took off work to rest, and returned on October 12, 2003 with increasing leg weakness throughout the day, such that his left leg was "quivering" and he fell. In his July 27, 2004 report, he opined that appellant's symptoms were not as bad as when appellant "reinjured" his back in October 2003.

Mr. Carmichael noted that only the property officer was authorized to pick up property and not the A-Corridor officer as appellant alleged. Additionally, Mr. Carmichael confirmed that the lieutenant on duty that day reported that he did not have appellant remove any bags of property as "he did not see any bags and as an acting lieutenant he would not have an officer do that." Regarding appellant's new description of the contents of the barrels, Mr. Carmichael determined that appellant had described a germicidal detergent, which was also issued in one-gallon jugs weighing just over seven pounds. Mr. Carmichael explained that the door described by appellant, while he worked as a visiting room officer on October 12, 2003, was examined and there was no difficulty opening or closing this door. Mr. Carmichael noted a one and a half-inch gap under the door, and that there were no signs of wear or tear. He commented that none of the doors dragged. The employing establishment checked the daily inspection reports and found no reported problems with any of the doors. An accompanying attachment included descriptions of activities on the aforementioned dates, descriptions regarding securing personal property and a diagram.

By decision dated November 10, 2004, the Office denied modification of the June 24, 2004 decision.

By letter dated February 2, 2005, appellant requested reconsideration. Appellant's representative contended that it was irrelevant as to what happened in October 2003 as the medical evidence supported that the disability stemmed from the injury sustained in August 2002.

In an undated statement, received on February 7, 2005, appellant alleged that, on October 9, 2003, he was working in the A unit as the assigned unit officer. He alleged that a safety inspection was to take place sometime during the end of the year, and the lieutenant on duty, quizzed him about the upcoming safety inspection. The lieutenant noticed two bags lying in the office, and instructed him to take care of them. Appellant noticed some mislabeled chemical containers and began cleaning the office, in the event the warden was to perform an inspection. Regarding the two bags, he alleged that the bags did not have any inmate names on them. Appellant removed the property from the bags, and believed them to be library books, and returned them to the bag and called the corridor officer to pick them up and take care of them. Appellant alleged that he hurt his back after lifting the bags. He stated that he continued cleaning up the office by retrieving the first of two containers of liquid, and continued to experience back pain. As appellant lifted the second container onto the table, his back tightened up and his leg began to hurt and burn. Following this, he sat down and avoided lifting anymore items. Appellant alleged that, at the end of his shift, while walking up stairs for an inmate count, his back and leg hurt, but he continued to work. When his shift ended, he noted that his pain was gone, but his leg was tingling and weak.

Regarding the incident of October 12, 2003, appellant alleged that he was working in the visiting room which involved checking in visitors and processing inmates through the inmate strip area. He contended that the second door was very difficult to open and close. Appellant stated that he had to plant his foot against the inner wall and force the door closed. At that time, he experienced increased lower back pain, which forced him to sit down. Appellant alleged that he promptly notified Lieutenant Donaldson and continued working but did not open or close any

more doors. When he tried to walk, his leg began to feel weak and he collapsed to the floor. He stated that Lieutenant Downing assisted him to a chair. Appellant also advised that the symptoms he experienced on October 12, 2003 were consistent with those experienced on October 19, 2003, only more severe, and consistent with those experienced after his August 5, 2002 work injury.

By decision dated April 5, 2005, the Office denied modification of the June 24, 2004 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>6</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>7</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>8</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician 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 specific employment factors identified by the claimant.<sup>9</sup>

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<sup>6</sup> 5 U.S.C. §§ 8101-8193.

<sup>7</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>8</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>9</sup> *Id.*

While an alleged work incident need not be confirmed by witnesses<sup>10</sup> and a claimant's statement alleging that an injury occurred is of great probative value and will stand unless refuted by substantial evidence,<sup>11</sup> the burden is on appellant to establish the employment incident at a given time and in a given manner.

### ANALYSIS

The record indicates that appellant had a prior claim accepted for a herniated disc at L3-4 for which he underwent surgery. However, he has not established the existence of employment factors alleged to have caused or contributed to his disability as of October 2003. Appellant has alleged that there were several work-related events which contributed to his claimed back condition.

Regarding October 9, 2003, appellant alleged that he experienced symptoms of back and leg pain after he began to lift, twist, and walked on the job. He alleged that he helped transfer inmates to other areas by packing books and other property from cells and lockers into heavy boxes and bags which he moved to an office. In another statement, appellant noted that he was "directed" to remove two bags full of inmates' property as the bags had been left by a previous unit officer. Appellant alleged that he took the two bags to the A-corridor officer, and after lifting the second bag, his back tightened. He also alleged that a safety inspection was about to take place, and the lieutenant on duty noticed two bags and instructed appellant to take care of them. Appellant alleged that he subsequently noticed that the bags were unlabeled and contained library books, and hurt his back after lifting them. The employing establishment responded that unit officers did not help inmates move, but told them "where to move," unless they were being placed in special housing. It was noted that no inmates were moved to special housing on the date in question. The employing establishment records did not show that appellant handled such property on October 9, 2003. The logs kept by the property office, which signed for all property from the unit officers, were reviewed and it was determined that no property was logged in from appellant's unit on October 9, 2003. The employing establishment also explained that only the property officer was authorized to pick up property and not the A-corridor officer as noted by appellant. It was noted that the lieutenant on duty that day reported that he did not direct appellant to remove any property. These discrepancies cast serious doubt on whether appellant moved the property as alleged on October 9, 2003, as alleged.

Appellant's representative initially alleged in a February 19, 2004 statement, that appellant also lifted a heavy barrel of floor wax on October 9, 2003. Appellant subsequently explained that he called the containers "barrels," and that he lifted a container onto a table inside the staff office for easy access. Appellant subsequently stated that there were two containers and that his back tightened after lifting the second one. The employing establishment noted that wax was contained in one gallon jugs which weighed approximately 8.54 pounds and responded that the "barrel" to which he referred was not wax but a germicidal detergent and deodorant, also

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<sup>10</sup> *Edgar L. Colley*, 34 ECAB 1691, 1695 (1983).

<sup>11</sup> *Virgil F. Clark*, 40 ECAB 575, 584 (1989).

issued in one gallon jugs weighing just over seven pounds. Therefore, the validity of his statement is in question and has not been sufficiently explained.

Regarding October 12, 2003, appellant alleged that his leg became weakened after he secured a heavy door leading to the inmate processing area. In an October 23, 2003 statement, appellant alleged that on October 12, 2003 he had to secure an entrance leading to the inmate processing area. Counsel added that this included opening and closing a gate which was very heavy and dragged on the floor. Appellant provided a diagram and alleged that he was working in the visiting room, when the door became difficult to close at mid morning, and had to be forced shut. In a subsequent description, appellant further added that the door was very stubborn and difficult to close, such that he had to plant his foot against the inner wall and force it closed. The employing establishment explained that, on that date, appellant was working as a visiting room officer and that he was operating electronic doors that opened when a button was pushed and that the door did not drag across the floor. The only other door appellant would have been exposed to in this area was checked on a daily basis for problems and there were no reports of problems listed on the security inspection report. Appellant subsequently submitted a diagram describing the door in question and explained that the door was located between the inmate strip down area and the prison yard and that, on October 12, 2003, he went to close this door and had to force it shut to secure it. The employing establishment conducted an on site analysis of the door described by appellant and explained that there was no difficulty found in opening or closing the door. There was a one and a half inch gap under the door and no wear on the floor to suggest that dragging had taken place. The daily security inspection report did not contain any reported problems with this door on the date in question. Therefore, appellant's allegation that he had to move a very heavy door is not established by the evidence.

In appellant's October 12, 2003 statement, he described that he fell after his "left leg gave out due to back problems and a weakened left leg." Mr. Downing noted that appellant appeared to sit back on his hands and fanny as opposed to a "hard fall." He also noted that appellant described a "bad back which caused his left leg to become weak and his knee kind of gave out." Mr. Carmichael noted that the staff described that appellant "sat back down to the floor and needed assistance in getting up." In an additional statement dated September 20, 2004, appellant alleged that, after moving the heavy door, he felt a burning sensation in his back and leg, and at the end of the shift, his left leg became weak and he positioned himself with his left hand to break his fall. The Board finds that appellant has not sufficiently explained the inconsistencies in his various descriptions and has not established that this incident occurred as alleged.

The Board notes that appellant has not shown that he sustained an injury at the time, place and in the manner alleged. The employing establishment controverted appellant's description and supported their allegations with record keeping logs and on-site investigations, which did not support appellant's claims of moving inmate property or his problems with the visiting room door.<sup>12</sup> The employing establishment denied that appellant was ordered to pick up and remove the two bags of inmate property and confirmed with the lieutenant in charge who

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<sup>12</sup> Evidence submitted by an employing establishment on the basis of their records will prevail over the assertions from the claimant unless such assertions are supported by documentary evidence. *Juanita Pitts*, 56 ECAB \_\_\_\_ (Docket No. 04-1527, issued October 28, 2004).

denied that he had appellant remove property. Additionally, the reporting methods in place for documenting transfer of property or difficulties with the operation of doors did not include any histories that would substantiate appellant's claims of moving inmate property on the date in question. The employing establishment also conducted an on-site analysis of the visiting room area, but there was no evidence of the types of problems appellant reported. The various discrepancies in appellant's written statements, contrasted with evidence submitted by the employing establishment, that cast serious doubt on the assertions of appellant.<sup>13</sup>

The circumstances of this case, therefore, cast serious doubt upon the occurrence of an October 9 or 12, 2003 incident in the manner as described by appellant. Given the inconsistencies in the evidence regarding how he sustained his injury, the Board finds that there is insufficient evidence to establish that appellant sustained an occupational disease in the performance of duty as alleged.<sup>14</sup>

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof in establishing that he sustained an injury in the performance of duty.

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<sup>13</sup> See *Karen E. Humphrey*, 44 ECAB 908, 911 (1993) (finding that appellant has failed to meet her burden of proof when unexplained inconsistencies in the evidence cast serious doubt on the validity of the claim).

<sup>14</sup> The Board notes that the record contains numerous reports pertaining to his prior accepted claim. To the extent that appellant may attribute any of his conditions to his prior accepted claim, he is not precluded from filing a claim for a recurrence of disability attributable to his prior accepted claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 5, 2005 and November 10, 2004 are affirmed.

Issued: February 13, 2006  
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