

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

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**CHARLES B. HOOVER, Appellant**

**and**

**DEPARTMENT OF HOMELAND SECURITY,  
TRANSPORTATION SAFETY  
ADMINISTRATION, Seattle, WA, Employer**

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**Docket No. 06-67  
Issued: March 14, 2006**

*Appearances:*  
*Charles B. Hoover, pro se*  
*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 October 11, 2005 appellant filed a timely appeal from a decision of the Office of Workers' Compensation Programs dated August 1, 2005, denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3(d), the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has established that he sustained an injury while in the performance of duty on April 1, 2005.

**FACTUAL HISTORY**

On April 26, 2005 appellant, a 47-year-old transportation security screener, filed a traumatic injury claim alleging that he strained his back on April 1, 2005 while lifting during recertification training. Pamela Welch, a witness, stated that she saw him carrying bins and warned him to stop "as he might reinjure himself." She related that appellant later informed her

that he injured himself while using the restroom. He stopped work on April 2, 2005. The employing establishment checked “yes” to the question of whether appellant injured himself in the performance of duty.

By letter dated June 9, 2005, the Office advised appellant that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. The Office asked him to submit a comprehensive medical report from his treating physician describing his symptoms and an opinion as to whether his claimed condition was causally related to his federal employment. The Office requested that he submit the additional evidence within 30 days.

In a June 15, 2005 report, Dr. Virgil V. Becker, Jr., a treating Board-certified orthopedic surgeon, reported that appellant first injured his back around August 24, 2004 due to lifting at the employing establishment and he was placed on light duty in January 2005. With respect to the current injury, he noted that appellant stated that he had training in April and that “on April 1, 2004 appellant he lifted and twisted his low back with a severe increase in pain.” A physical examination of the spine revealed “a truncal shift to the right,” guarded movements, 20 degrees extension and “forward flexes lacking 16 inches of touching his fingers to the floor.” Dr. Becker diagnosed acute recurrent lumbar strain and underlying significant lumbar spine degenerative disc disease.

In a June 16, 2005 report, Dr. Becker concluded that appellant’s preexisting underlying degenerative disc disease was worsened by the lifting and carrying activities.

On June 28, 2005 the Office received an April 27, 2005 memorandum from Ms. Welch, who stated that appellant was being given “remedial training for his Model 3 Recertification” on April 1, 2005. She was aware that he had a prior employment injury so he was advised to refrain from doing anything which might put stress on his back. Appellant was seen carrying bins so Ms. Welch asked him to stop as he might get injured. Subsequently, he told her that he injured himself while using the restroom and that he did not need to file a CA-1 at that time. The first time Ms. Welch was aware of appellant’s injury was on April 26, 2005 when his wife requested her to complete a CA-1 form for him.

On July 14, 2005 the Office received an April 9, 2005 report by Dr. Elizabeth Bahn, a Board-certified emergency medicine physician, a memorandum from appellant signed March 13 and April 3, 2005 and his June 27, 2005 response to the Office’s request for additional information. Appellant noted that he was unable to perform his full duties as a screener due to an August 24, 2004 employment injury. He informed his supervisor on March 13, 2005 of his inability to stretch, twist, bend or lift.

On June 27, 2005 appellant informed his supervisors of his injury, filled out a CA-1 form and was sent home. He noted the only injuries he had sustained were employment injuries and contended that he did not delay seeking medical treatment. Appellant noted that the Office previously accepted that he sustained a lower back injury on August 24, 2004 with a Claim No. 14-2033154.

Dr. Bahn noted that she first saw appellant in the emergency room on April 9, 2005 and that he was seen the prior week. He related injuring his back in December at work and that he had reexacerbated his injury about two weeks prior. A physical examination revealed no tenderness to palpation of the lumbar musculature. Dr. Bahn diagnosed sciatica and low back pain secondary to an employment injury “which seems to be fairly chronic since December.”

In a decision dated August 1, 2005, the Office denied appellant’s claim, finding that the evidence was insufficient to establish that the alleged incident occurred. The Office found that he had failed to establish fact of injury due to the inconsistencies in the evidence as to how the injury occurred.<sup>1</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act has the burden of establishing the essential elements of his 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>2</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>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established.<sup>4</sup> There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

An award of compensation may not be based on surmise, conjecture or speculation or upon appellant’s belief that there is a causal relationship between his condition and his employment.<sup>7</sup> To establish causal relationship, he must submit a physician’s report which

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<sup>1</sup> Following the August 1, 2005 decision, the Office received additional evidence. However, the Board may not consider new evidence on appeal. See 20 C.F.R. § 501.2(c); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

<sup>2</sup> *Barbara R. Middleton*, 56 ECAB \_\_\_\_ (Docket No. 05-1026, issued July 22, 2005); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *Ellen L. Noble*, 55 ECAB \_\_\_\_ (Docket No. 03-1157, issued May 7, 2004); *Daniel J. Overfield*, 42 ECAB 718 (1991).

<sup>4</sup> *Barbara R. Middleton*, 56 ECAB \_\_\_\_ (Docket No. 05-1026, issued July 22, 2005).

<sup>5</sup> See *Tracey P. Spillane*, 54 ECAB 608 (3003); *Deborah L. Beatty*, 54 ECAB 340 (2003).

<sup>6</sup> *Thomas L. Agee*, 56 ECAB \_\_\_\_ (Docket No. 05-335, issued April 19, 2005).

<sup>7</sup> *Manuel Gill*, 52 ECAB 282 (2001).

reviews the factors of employment identified by appellant as causing his condition and taking these factors into consideration as well as findings upon examination and appellant's medical history, states whether these employment factors caused or aggravated his diagnosed condition.<sup>8</sup>

### ANALYSIS

The Board finds that appellant ailed to meet his burden of proof in establishing that he sustained a traumatic injury on April 1, 2005.

The initial question presented is whether an employment incident occurred as alleged on April 1, 2005. An injury does not have to be confirmed by eyewitnesses in order to establish that the employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>9</sup>

The case record reflects two different descriptions of how the April 1, 2005 incident at work occurred. Appellant attributed his condition to lifting bins during recertification training on that date. Ms. Welch, a witness, stated that he informed her that he had injured his back while using the restroom. On March 13, 2005 appellant informed his supervisor that he was unable to perform his duties as screener due to an August 24, 2004 employment injury. On June 27, 2005 he noted that he had originally injured his lower back on August 24, 2004 and gave the claim number 14-2033154 for this injury. Dr. Bahn, in an April 9, 2005 emergency room report, noted that he gave a history of hurting his back at work in December 2004 and then reinjured it about two weeks prior. In a June 15, 2005 report, Dr. Becker stated that he first injured his back on August 24, 2004 due to lifting and that during training on April 1, 2005, appellant injured his back when he lifted and twisted. While his statement of sustaining injury on April 1, 2005 is consistent with his work stoppage and with seeking emergency medical treatment, appellant's claim of a traumatic injury due to lifting bins is not consistent with the statement provided by Ms. Welch or the histories provided by Dr. Bahn and Dr. Becker. Dr. Becker related that appellant sustained an employment-related back injury in August 2004 and had been on light-duty work due to the injury. Dr. Bahn related in an April 9, 2005 report that he stated appellant had injured his back in December at work and that he "reexacerbated his injury" two weeks prior.

Due to the inconsistencies of the factual evidence of record, appellant has not established that the claimed incident occurred as alleged. Therefore, he failed to meet his burden of proof in establishing that he sustained an injury as alleged on April 1, 2005. The Board finds that the Office properly denied appellant's claim.

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<sup>8</sup> *Calvin E. King*, 51 ECAB 394 (2000).

<sup>9</sup> *Delphyne L. Glover*, 51 ECAB 146 (1999).

**CONCLUSION**

The Board finds that appellant failed to provide a consistent history of injury occurring on April 1, 2005 and resulting in the diagnosed conditions of record. He has failed to meet his burden of proof in establishing an injury in the performance of duty and the Office properly denied his claim.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 1, 2005 is affirmed.

Issued: March 14, 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