

United States Department of Labor  
Employees' Compensation Appeals Board

---

JANET M. GROVE, Appellant )

and )

DEPARTMENT OF VETERANS AFFAIRS, )  
VETERANS ADMINISTRATION MEDICAL )  
CENTER, Portland, OR, Employer )

---

Docket No. 06-475  
Issued: May 2, 2006

*Appearances:*  
*Janet M. Grove, 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 December 22, 2005 appellant filed a timely appeal of a September 22, 2005 merit decision of the Office of Workers' Compensation Programs, finding that she did not sustain an injury while in the performance of duty. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant established that she sustained an injury while in the performance of duty.

**FACTUAL HISTORY**

On December 21, 2003 appellant, then a 49-year-old program assistant, filed a traumatic injury claim (Form CA-1) alleging that on April 21, 2003 she sustained a lower back strain and experienced pain in her right hip while removing 50-pound cases of copy paper from a hand truck and stacking them on the floor. On the Form CA-1, the employing establishment stated

that it had no knowledge of the alleged injury. It noted that appellant was counseled on April 29, 2003 due to her conduct and never returned to work. Her employment was terminated on May 2, 2003. The employing establishment controverted appellant's claim on the grounds that it was filed more than 30 days after the alleged injury.

In support of her claim, appellant submitted correspondence regarding her failure to schedule the use of conference rooms and the termination of her employment for failing to follow directions related to these incidents. She also submitted correspondence regarding the input of data and the assignment of work space and her employment records. A medical report from a physician whose signature is illegible, indicated that on April 30, 2003 appellant was treated in a hospital emergency room where she was diagnosed as having a lumbar/thoracic strain. She was released to return to modified work on May 3, 2003 with the stated physical limitations and physical therapy was prescribed.

In a January 26, 2003 letter, the employing establishment again controverted appellant's claim on the grounds that she failed to provide notification of the alleged injury and to file a claim in a timely manner. She was counseled by her supervisor, Beverly Johnson, on April 29, 2003 and did not return to work. Ms. Johnson later discovered that appellant had returned to work that evening and requested 40 hours of sick leave from April 30 to May 7, 2003 due to a back injury. On April 30, 2003 Ms. Johnson received a medical document by facsimile which indicated that appellant sustained a work injury and that she should be off from work until May 5, 2003. Appellant was terminated on May 2, 2003 for misconduct. She filed an appeal of this decision in August 2003 and submitted a partial transcript of the August 20, 2003 hearing. The employing establishment concluded that appellant failed to submit medical evidence sufficient to establish a causal relationship between the alleged injury and her work duties.

By letter dated February 10, 2004, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It stated that the evidence did not establish that she provided timely notification of the alleged injury or that appellant actually experienced the alleged incident or the employment factor alleged to have caused the claimed injury. In addition, no medical opinion had been submitted from a physician as to how her work activity resulted in an injury. It provided 30 days for the submission of additional evidence.

In a February 14, 2004 letter, appellant stated that a physician sent written notification of her alleged injury to her supervisor at her request on April 30, 2003 and again on May 1, 2003. She also reported the injury by facsimile on April 30 and May 1, 2003. The first copy was faxed following her medical visit and the second one was faxed the next day after her supervisor informed her that she did not receive the first copy. Appellant received a termination notice from the employing establishment following her notification of the claimed injury. She described difficulties she encountered in her attempt to obtain a Form CA-1, noting that her supervisor never sent the requested form.

Appellant contended that she did not leave her employment willingly and did not delay in filing a claim. She had available sick leave and, at the time, did not realize the seriousness of her injury. Appellant related that it was not until after her medical evaluation that she realized the impact of her injury. She was to remain off work until May 3, 2003 and begin physical therapy and participate in physical capacity testing. Appellant stated that no one witnessed the alleged

injury. She described her chronic back and leg symptoms and indicated that she had not previously sustained similar disability or injuries. Appellant filed a prior claim for injury to her right and left wrist. She underwent carpal tunnel wrist release surgeries in 1996 and 1997, for which the Office paid compensation.

On April 30, 2003 Dr. Henry W. Vea, a Board-certified internist, x-rayed appellant's thoracolumbar spine. He noted that she had sustained an on-the-job back injury and complained of low back pain. Dr. Vea found no evidence of acute displaced lower thoracic or lumbar spine fracture. He found moderately extensive mid-thoracic spine spondylotic osteophytosis with the suggestion of mid-thoracic kyphosis, including anterior wedging of the T6 vertebra that was age indeterminate. There was smoothly contoured borderline anterior wedging of T11 to T12 vertebra that was most likely of a physiologic nature. Modest lumbar spine spondylotic vertebral body marginal osteophyte formation was most noticeable at the anterior L3-4 disc space margin. Dr. Vea found no destructive osseous lesions or lower thoracic or lumbar spine perivertebral soft tissue mass.

In a decision dated March 12, 2004, the Office denied appellant's claim. The evidence was insufficient to establish that she sustained a medical condition caused by the April 21, 2003 employment incident.

The Office received literature regarding the filing of a workers' compensation claim and billing for medical treatment and appellant's employment records. Progress notes from her physical therapists addressed intermittent treatment from May 14 through 27, 2003. A May 16, 2003 report from a physician whose signature is illegible listed the date of injury as April 21, 2003 and found that appellant sustained a lumbar/thoracic strain.

In an October 12, 2004 narrative medical report, Dr. Laura S. Gordon, a Board-certified urologist, provided a history that appellant performed heavy lifting at work and in April 2003, sustained a herniated disc. She addressed appellant's medical and social background. Dr. Gordon reported essentially normal findings on physical examination with the exception of a Grade 1-2 cystocele and urethral hypermobility with leakage and a Grade 2-3 rectocele with poor preservation of the perineum. She reported a negative urinalysis laboratory test. Dr. Gordon opined that appellant had mixed stress, urgency incontinence, pelvic floor relaxation with cystocele and a symptomatic rectocele. She was post status hysterectomy with preservation of the cervix. There was no significant cervical descensus but a history of bleeding that was somewhat worrisome. Anticholinergic agents alone had not been helpful and led to the worsening of appellant's bowel complaints. Dr. Gordon stated that appellant would benefit from surgery, although her obesity put her at risk for a poor result and her back problems put her at risk for continued problems with urgency and urgency incontinence even after a good anatomic result.

In an October 22, 2004 report, Robin L. Barnes, a family nurse practitioner, stated that appellant was obese and listed other diagnoses which are illegible. In an April 6, 2004 report, she found that appellant had arthritis in her back, right hip and hands and tinea corporis in the folds of her legs by history. Ms. Barnes' July 8, 2004 report diagnosed hyperlipidemia, right hip pain was most likely due to osteoarthritis, controlled hypertension, dysmetabolic syndrome and candidiasis under the breasts and apron of the abdomen.

Appellant submitted a gynecological questionnaire she completed on June 4, 2004. A July 19, 2004 report of Dr. Richard A. Carpenter, an orthopedic surgeon, found that she suffered from trochanteric bursitis of the right hip and probably a herniated disc in the low back.

Reports dated March 5, 2001 from physicians with illegible signatures indicated that appellant was diagnosed with chronic impingement of the right shoulder and underwent arthroscopic acromioplasty on that date. An unsigned report dated June 11, 1997 revealed that she sustained an injury on January 10, 1996 while working as a secretary at the employing establishment and that she underwent left carpal tunnel release on February 28, 1997. The report indicated that appellant sustained impairment attributable to decreased range of motion of the left wrist.

A November 3, 1998 progress note from Dr. Joan M. Browning, Board-certified in preventive medicine, revealed that appellant was status post bilateral carpal tunnel releases and that she was permanently partially disabled. She was limited to four to five hours on the keyboard. A May 3, 2001 progress note from Otisha Gulley, a support staff employee at Kaiser Permanente, found that appellant suffered from obesity, skin tags, asthma and candidiasis cutaneous.

Dr. Carpenter ordered a magnetic resonance imaging scan of appellant's lumbar spine which was performed on July 21, 2004. He diagnosed a herniated disc at L4-5. On February 1, 2005 Ms. Barnes prescribed physical therapy for appellant.

In a March 7, 2005 letter, appellant requested reconsideration of the Office's March 12, 2004 decision. She submitted a February 15, 2005 treatment note from her physical therapist whose signature is illegible. The treatment note provided that appellant's muscle tissue in the thoracic spine was decreasing and that she tolerated treatment well. A February 17, 2005 treatment note indicated that appellant had decreased tension and adhesions in the paraspinal on the right side and tolerated exercises well. In a March 4, 2005 treatment note, Dr. Barnes diagnosed "724.2."

By decision dated September 22, 2005, the Office denied modification of the March 12, 2004 decision, finding that the evidence of record failed to establish that appellant sustained a medical condition causally related to the April 21, 2003 employment incident.

### **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 Federal Employees' Compensation Act, that the claim was filed within applicable time limitation, that an injury was sustained while 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>

---

<sup>1</sup> 5 U.S.C. §§ 8101-8193.

<sup>2</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury of an occupational disease.<sup>3</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 or exposure, which is alleged to have occurred.<sup>4</sup> An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged by a preponderance of the reliable, probative and substantial evidence.<sup>5</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>6</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>7</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>8</sup>

### ANALYSIS

The Office accepted that the April 21, 2003 incident occurred at the time, place and in the manner alleged by appellant. It is not disputed that on April 21, 2003 she removed 50-pound cases of copy paper from a hand truck onto the floor.

The Board, however, finds that the medical evidence of record fails to establish that appellant's sustained injury was due to the April 21, 2003 employment incident. Appellant submitted medical reports from physicians whose signatures are illegible and unsigned medical reports which listed a diagnosis of lumbar and thoracic strains. The Board finds that these reports are of no probative value because they are not signed by a physician.<sup>9</sup> As the reports and progress note lack proper identification, the Board finds that they do not constitute probative medical evidence sufficient to establish appellant's burden of proof.<sup>10</sup> She also submitted a

---

<sup>3</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael I. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 2.

<sup>4</sup> See also, Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

<sup>5</sup> *Charles B. Ward*, 38 ECAB 667 (1987).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) ("injury" defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) ("traumatic injury" and "occupational disease" defined).

<sup>7</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>8</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>9</sup> *Ricky S. Storms*, 52 ECAB 349 (2001).

<sup>10</sup> *Vickey C. Randall*, 51 ECAB 357 (2000); *Merton J. Sills*, 39 ECAB 572 (1988). (Reports not signed by a physician lack probative value).

progress note from Ms. Gulley, a support staff employee at Kaiser Permanente. However, this note is of no probative value as she is not a physician and not competent to render a medical opinion.<sup>11</sup>

Dr. Vea diagnosed several conditions related to appellant's thoracic and lumbar spines, but failed to state whether the diagnosed conditions were caused by the accepted April 21, 2003 employment incident. The Board finds that Dr. Vea's report is insufficient to establish appellant's claim.

Dr. Gordon provided a history that appellant performed heavy lifting at work and that in April 2003 she sustained a herniated disc. She listed findings regarding appellant's urological conditions and complaints. Dr. Gordon stated that surgery would be beneficial but appellant's obesity put her at risk for a poor result and her back problems put her at risk for continued problems with urgency and urgency incontinence even after a good anatomic result. The Board finds that Dr. Gordon failed to address whether the diagnosed urological conditions were caused or contributed to by the April 21, 2003 employment incident. Therefore, her report is insufficient to establish appellant's claim.

The progress notes from appellant's physical therapists which covered intermittent dates and the reports and treatment note of Ms. Barnes, a family nurse practitioner, do not constitute probative medical evidence. Neither a physical therapist<sup>12</sup> or a nurse practitioner<sup>13</sup> is defined as a "physician" under the Act.

As there is insufficient rationalized medical evidence of record establishing that appellant hurt her back while in the performance of duty as alleged, she has failed to meet her burden of proof.

### CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury while in the performance of duty.

---

<sup>11</sup> *James A. Long*, 40 ECAB 538 (1989); *Harold Hendrix*, 1 ECAB 54 (1947).

<sup>12</sup> 5 U.S.C. §§ 8101-8193; 8101(2); *Vickey C. Randall*, *supra* note 16 (a physical therapist is not a physician under the Act).

<sup>13</sup> *Joseph N. Fassi*, 42 ECAB 677 (1991).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 22, 2005 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 2, 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