



A magnetic resonance imaging (MRI) scan study of the thoracic spine dated September 29, 2003 revealed an extruded disc at T7-8 and T8-9 and abnormal discs at T7 and T8 suspicious for myeloma or metastatic disease. A computerized tomography (CT) scan of the thoracic spine obtained on October 1, 2003 showed soft tissue at T7 suspicious for metastatic disease and an extruded calcified disc at T7 and T8.

In a report dated October 3, 2003, Dr. Algis P. Sidrys, a Board-certified internist specializing in radiation oncology, noted that appellant sought treatment from a physician for “mid[-]back pain, which [he] could trace back to what he considered a pulled muscle injury at work. [Appellant] does not recall the actual injury or event but states he has had similar pains in the same area in the past. The discomfort was quite severe initially.” Dr. Sidrys reviewed the results of objective studies and noted that an osteophyte at T7-8 was “actually bulging into the spinal cord.” Dr. Sidrys recommended further diagnostic tests to determine whether thoracic changes seen on the MRI scan study were benign or due to metastatic disease.

A CT scan of appellant’s chest and abdomen dated October 6, 2003, revealed no evidence of a mass or neoplasm.

In a follow-up report dated October 7, 2003, Dr. Sidrys found no evidence of metastatic cancer and opined that appellant had “some sort of structural abnormality at T7 and T8 which warrants further investigation.”

In a report dated October 16, 2003, Dr. Leonardo R. Rodriguez-Cruz, a neurosurgeon, stated:

“[Appellant] gives a very interesting history of recurrent pain in exactly the same area over a process of probably six to eight years. He says that he has had frequent work-related injuries always in the same area. [Appellant] says that this one occurred a couple of months ago with heavy lifting and this prompted the evaluation by radiographs which led to us today.”

Dr. Rodriguez-Cruz found that appellant’s MRI scan was suspicious for an infectious disease. He opined that he did “not believe that this is a work-related injury because of the appearance involving the entire T7 and T8 vertebral bodies. The extruded disc between them I think is a manifestation of dissolution of the consistency of the disc.”

In a progress report dated October 24, 2003, Dr. Rodriguez-Cruz reviewed the bone scan, which indicated a possible infection at T7 and T8. He diagnosed a probable inflammatory process due to repeated T7 and T8 injuries and found that appellant could resume light-duty employment pending a biopsy.

On October 31, 2003 Dr. Rodriguez-Cruz requested authorization from the Office to perform an open vertebral body biopsy for inflammatory spondylitis. He noted that appellant had “repeated injuries to the thoracic spine” and that the spondylitis was “associated with a disc herniation.” In an accompanying progress report of the same date, Dr. Rodriguez-Cruz indicated that tests had eliminated a malignancy or infection as the cause of appellant’s abnormality at

T7-8 and stated: “The only thing I can think of is that this is some unusual inflammatory condition related to repeated trauma.” He recommended an open biopsy to confirm his diagnosis and attributed the need for surgery to his work injuries.

An Office medical adviser reviewed the request for surgical authorization and recommended that it be denied as the date of injury was not specified, the diagnosis was unclear and Dr. Rodriguez-Cruz had previously opined that the suspected condition was not work related.

By decision dated January 15, 2004, the Office denied appellant’s claim on the grounds that he did not establish fact of injury. The Office determined that appellant had not established the occurrence of the alleged September 13, 2003 employment injury and further noted that he could file an occupational disease claim if he believed that his condition arose over more than a single workday.

On March 5, 2004 the Office received the report of appellant’s left-sided vertebral body biopsy, performed on November 25, 2003. The postoperative diagnosis was inflammatory disease. A pathology report showed no evidence of an inflammatory process or tumor.

In a progress report dated December 22, 2003, Dr. Rodriguez-Cruz discussed appellant’s complaints of “severe thoracic pain with radiation along the rib cage” after working part time. In an accompanying disability certificate, he found that appellant was totally disabled from December 15 to 29, 2003. In a progress report dated January 19, 2004, Dr. Rodriguez-Cruz noted that appellant was able to work but experienced considerable pain in his thoracic spine.

On March 10, 2004 appellant requested reconsideration. He submitted medical reports from 1999 and 2000 describing prior injuries to his back. Appellant also submitted a report dated February 18, 2004 from Dr. Rodriguez-Cruz, who related:

“Although [appellant] was originally referred to me by an oncologist with the suspicion that his thoracic spine disease was related to tumor, direct biopsy of the region proved that not to be true. Given his physical examination and his radiographic studies, therefore, I conclude that he has evidence of repeated trauma to the area with resulting disc herniations and reactive changes in his thoracic vertebral bodies. He very clearly gives a history of repeated injuries secondary to work. I have no other historical evidence to blame these repeated injuries on anything other than his work environment.”

By letter dated March 22, 2004, the Office requested additional factual information and a medical report providing a diagnosed condition due to the injury with supporting rationale.

In a report dated April 23, 2004, Dr. Rodriguez-Cruz diagnosed a herniated thoracic disc, inflammatory spondylopathy and acquired kyphosis. He related:

“I believe that these are related to his injury because of [appellant’s] history of repeated trauma to the same portion of his spine. This has led to deterioration and

inflammatory spondylopathy of the thoracic vertebra, which have in turn weakened over time and repeated injury to cause the intervening discs to herniate which has also contributed to his acquired kyphosis.”

Dr. Rodriguez-Cruz opined that appellant had a permanent aggravation due to his repetitive work injuries which “caused deformation of the bone and the disc in his spine.” He noted that he made his prior finding that appellant’s condition was not employment related before performing the biopsy. Dr. Rodriguez-Cruz stated: “My original premise that this was an inflammatory condition continues, however, since it is not infectious, the only remaining cause for the inflammation must be related to the repeated work injuries.”<sup>1</sup>

In a statement dated April 30, 2004, appellant described his injury as occurring when he dropped a tray he was loading and grabbed it before it spilled, twisting his back. He related that he experienced sharp pain between his shoulder blades. Appellant continued delivering his route and reported his injury to his supervisor upon his return to the employing establishment. He noted that he had previous employment-related injuries to his back.

By decision dated July 21, 2004, the Office denied modification of its January 15, 2004 decision.

On June 7, 2005 appellant requested reconsideration. He explained that immediately following the September 13, 2003 incident his entire back hurt too much for him to identify the specific place that was injured. Appellant asserted that Dr. Rodriguez-Cruz told him that the September 13, 2003 injury caused his problems.

In an unsigned office visit note dated July 8, 2005, Dr. Scott Standard, a neurosurgeon, diagnosed spondylosis of the thoracic spine and noted that appellant related his condition to a September 13, 2003 employment injury. Dr. Standard stated: “This is the date of his onset of symptoms and his edema of the bone, certainly would represent microfractures as a result of this work[-]related injury. Therefore, I believe with Dr. [Rodriguez-]Cruz that this [was] work related.”

By decision dated December 1, 2005, the Office denied modification of its April 14, 2004 decision. The Office found that appellant had not established the occurrence of the described employment incident on September 13, 2003 and had not established a medical condition due to the alleged incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees’ Compensation Act<sup>2</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 filed within the applicable time limitation; that an injury was sustained while in the

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<sup>1</sup> In letters dated March 31 and May 6, 2004, the employing establishment challenged appellant’s claim.

<sup>2</sup> 5 U.S.C. §§ 8101-8193.

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>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating 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> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>6</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>7</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>8</sup> An injury 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 statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>9</sup> An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>10</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 doubt on an employee’s statements in determining whether a *prima facie* case has been established.<sup>11</sup> However, an employee’s statement alleging

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<sup>3</sup> *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>7</sup> *Id.*

<sup>8</sup> *See Louise F. Garnett*, 47 ECAB 639 (1996).

<sup>9</sup> *See Gene A. McCracken*, 46 ECAB 593 (1995).

<sup>10</sup> *See Louise F. Garnett*, *supra* note 8.

<sup>11</sup> *Linda S. Christian*, 46 ECAB 598 (1995).

that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.<sup>12</sup>

In order to satisfy his burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the employment incident caused the alleged injury.<sup>13</sup> 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 employee's alleged injury and the employment incident.<sup>14</sup> The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.<sup>15</sup>

### ANALYSIS

Appellant filed a claim alleging that he sustained back injury on September 13, 2003 when he grabbed a tray to prevent it from falling. The Office denied his claim on the grounds that he did not demonstrate that the specific event occurred at the time, place and in the manner alleged.

The Board finds that appellant has not established the occurrence of the September 13, 2003 employment incident as there are inconsistencies in the evidence sufficient to cast serious doubt upon the validity of his claim.<sup>16</sup> While appellant reported the incident to his supervisor on that date after completing his route and sought reasonably prompt medical treatment, the medical reports are devoid of a history of the September 13, 2002 employment incident. In the most contemporaneous medical report of record dated October 3, 2003, Dr. Sidrys indicated that appellant had sought medical treatment for a muscle pull sustained at work but did "not recall the actual injury or event..." Dr. Rodriguez-Curz, in a report dated October 16, 2003, noted that appellant related a history of "frequent work-related injuries always in the same area. He says that this one occurred a couple of months ago with heavy lifting..." The only physician to reference the September 13, 2003 employment incident is Dr. Standard, who in his July 8, 2005 report noted that appellant attributed his condition to a September 13, 2003 employment injury. He did not, however, describe the September 13, 2003 employment injury but merely noted that appellant indicated that it was the date of onset of his symptoms. The majority of the medical reports attribute appellant's thoracic spine condition to repeated work injuries rather than exposure to one particular event occurring during one work shift.<sup>17</sup> The lack of a medical report

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<sup>12</sup> *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

<sup>13</sup> *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

<sup>14</sup> *Gary J. Watling*, *supra* note 6.

<sup>15</sup> *See John W. Montoya*, 54 ECAB 306 (2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

<sup>16</sup> *See Linda S. Christian*, *supra* note 11.

<sup>17</sup> A traumatic injury is defined as a "condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift." 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift." 20 C.F.R. § 10.5(q).

containing an accurate history of the September 13, 2003 employment incident is unexplained by appellant and thus casts doubt on the validity of his traumatic injury claim. Consequently, the Office properly denied appellant's claim for a traumatic injury on September 13, 2003.

On appeal appellant's attorney argues that Dr. Rodriguez-Cruz' opinion that appellant's condition arose from repeated work injuries is sufficient to establish that his condition is employment related. Appellant, however, has not alleged that he sustained an occupational disease or submitted any factual statement identifying work factors or incident alleged to have caused his condition. At issue, consequently, is whether appellant has established that he sustained a traumatic injury on September 13, 2003. As discussed above, he has not met his burden of proof to show the occurrence of the September 13, 2003 employment incident and thus failed to establish his traumatic injury claim.

**CONCLUSION**

The Board finds that appellant has not established that he sustained an injury on September 13, 2003 in the performance of duty.

**ORDER**

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

Issued: September 25, 2006  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board