



By letter dated February 12, 2008, the Office asked appellant to submit additional factual and medical information, including a comprehensive medical report from her treating physician which included a reasoned explanation as to how the specific work factors or incidents identified by appellant had contributed to her claimed injury. No additional evidence was received.

By decision dated March 24, 2008, the Office denied appellant's claim on the basis that fact of injury was not established. It found the factual basis of her claim was unclear or unknown and no medical evidence was submitted to establish that an injury was sustained in connection with the alleged work incident.

### **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. 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>1</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>2</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>3</sup>

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his or her subsequent course of action. 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 cast doubt on an employee's statements in determining whether he or she has established a *prima facie* case. An employee has not met his or her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, an employee's 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>4</sup>

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<sup>1</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>2</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>3</sup> *Id.*

<sup>4</sup> *Michelle Kunzwiler*, 51 ECAB 334, 335 (2000).

### ANALYSIS

The Board finds that appellant has not submitted sufficient evidence to establish that she sustained an injury at the time, place and in the manner alleged. Appellant contends that she sustained a back injury in the performance of duty on December 15, 2006. However, she did not file her claim until February 8, 2008, more than a year after the alleged incident occurred. The employing establishment disputed the claim, noting that appellant failed to report any injury until the claim was filed in February 2008. There is no evidence that she stopped work or lost any time from work due to the December 15, 2006 alleged incident. In a letter dated February 12, 2008, the Office requested that appellant submit additional factual and medical evidence in support of her claim. However, at the time of the Office's March 24, 2008 merit decision, she failed to submit any additional evidence in support of her claim. Appellant did not submit any statement explaining the circumstances of the alleged December 15, 2006 lifting incident or why she did not sooner file her claim. There is no other evidence supporting that her allegation of injury was consistent with her subsequent course of action. Instead, appellant provided late notification, continued to work for over a year without apparent difficulty following the alleged injury and failed to submit any evidence that she obtained medical treatment for a low back condition resulting from the alleged incident. As her conduct is not consistent with her claimed injury, this casts serious doubt on the validity of her claim. The Office properly found that appellant has not met her burden of proof in establishing that she sustained an injury on December 15, 2006.

### CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained an employment-related injury in the performance of duty.<sup>5</sup>

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<sup>5</sup> On appeal, appellant submitted medical evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated March 24, 2008 is affirmed.

Issued: December 11, 2008  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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

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