United States Department of Labor
Employees' Compensation Appeals Board

R.W., Appellant	)	
and	)	**Docket No. 07-1720**
	)	**Issued: February 26, 2008**
DEPARTMENT OF THE NAVY, NAVAL HOSPITAL, Camp Lejeune, NC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 12, 2007 appellant filed a timely appeal from the April 23, 2007 decision of the Office of Workers' Compensation Programs denying modification of the August 18, 2006 decision denying her traumatic injury claim. 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 has established that she sustained an injury in the performance of duty as alleged.

FACTUAL HISTORY

On June 13, 2006 appellant, then a 40-year-old food service worker, filed a traumatic injury claim, Form CA-1, alleging that she injured her back on March 1, 2006 while lifting boxes of vegetables weighing 50 pounds. The employing establishment controverted the claim. Connie Scott, appellant's department head, stated that she was not on duty the day of her alleged injury. She noted that appellant was on sick leave March 1 to 3, 2006. Appellant's immediate supervisor, Joseph C. Jones, stated that she told him on March 4, 2006 that she was not feeling

well because of "female problems" or kidney stones and that her back hurt, perhaps from injuring it. Mr. Jones told her to go to the employee health clinic or go home to take care of herself.

On March 30, 2006 Dr. Johnny Williams, a Board-certified gynecologist, notified the employing establishment that appellant had been diagnosed with lumbar disc disease, acute back pain and lumbosacral strain. Appellant did not return to work until April 5, 2006 when she was released with restrictions on lifting, standing and bending. Ms. Scott stated that, when appellant provided her medical documentation to Mr. Jones and other officials, she told them that she had been injured on February 25, 2006, gone to her own physician on February 27, 2006 and did not returned to work until March 4, 2006. Appellant returned to work on April 6, 2006 but left early and did not return.

On June 26, 2006 Dr. Michael Nunn, an osteopathic physician and a Board-certified psychiatrist, evaluated appellant's lumbar pain. He stated that appellant injured her back at work on March 1, 2006 when she lifted a 50-pound box. Appellant complained of pain in the cervical, thoracic and lumbar spine with slight involvement of the pelvis. She had episodes of irritability and feelings of helplessness that worsened after her injury. Dr. Nunn diagnosed major depressive episode, single episode; somatic dysfunction of the cervical, thoracic, lumbar, sacrum and sacroiliac and other areas of the spine and muscle spasms.

On July 12, 2006 the Office notified appellant that she needed to provide additional factual and medical evidence to establish her claim.

On August 14, 2006 appellant stated that her back and hips began hurting on February 27, 2006 when she was lifting 50-pound bags of potatoes and onions. She notified her supervisor, Mr. Jones, of her pain and he told her to go home. Appellant's pain did not diminish the following day. She called Mr. Jones on March 1, 2006 and told him that her back began hurting after she lifted heavy bags at work. Appellant returned to work on March 4, 2004 and informed Mr. Jones that Dr. Williams said the problem could be "female problems, kidney stones or strained discs." Mr. Jones advised her to go home and take care of herself. Appellant returned to work briefly in early April 2006, but left again because the employing establishment would did not honor the physical restrictions provided by Dr. Williams, who kept appellant out of work and could not find the cause of her condition. On June 15 2006 he referred her to Dr. Nunn, who was able to diagnose her condition. Appellant stated that the way she had been treated by the employing establishment following her employment injury was a factor in the development of her depression.

On August 12, 2006 Dr. Nunn stated that appellant was injured on March 1, 2006 while lifting a 50-pound box, but did not report her condition immediately because she thought it would improve. He stated that appellant's prognosis was poor because her acute condition had developed into a chronic condition and she had developed major depression secondary to her initial injury.

By decision dated August 18, 2006, the Office denied appellant's claim on the grounds that she had not established the occurrence of the employment incident as alleged. The Office

noted that the medical records provided March 1, 2006 as the date of injury, whereas she stated that the date was February 27, 2006.

On February 13, 2007 appellant requested reconsideration. She stated that she mistakenly provided the wrong date because of pressure and stress she was under. Appellant realized the correct date of the incident because of the note her supervisor made on her timesheet. The handwritten note stated: "Week 2, Day 7. Employee clocked in, but was unable to work because of her sustain injury.[sic] [Appellant] had to leave work. M.J." Appellant stated that she had been out with the flu for a few days prior to March 4, 2006. She was still not feeling very well when she came to work that day and was assigned to work in the scullery. Because appellant was the only employee there, she was required to lift heavy bags of vegetables by herself. As she lifted a bag of potatoes she felt something pop and experienced pain. Appellant notified her supervisor, who told her to go home and take care of herself. She called her doctor that day, but he was not available until Tuesday, March 7, 2006. Appellant stated that Dr. Williams was not certain what the problem was and tried to refer her to an orthopedist or a neurologist. She found Dr. Nunn on her own and began treatment.

On February 15, 2007 Dr. Nunn stated that he began treating appellant on June 26, 2006. He experienced the same conditions he described in his initial report. Dr. Nunn stated that her injury occurred on March 4, 2006, as noted on her time card by her supervisor. On February 15, 2007 Dr. Williams stated that appellant's initial visit to his office occurred on March 7, 2006. He diagnosed a lumbar sacral strain/sprain. Dr. Williams attempted to refer appellant for orthopedic and neurological treatment because she was still symptomatic as of her last visit on June 15, 2006.

By decision dated April 23, 2007, the Office denied modification of the August 18, 2006 decision. It found that appellant's statement of the facts surrounding her alleged injury was contradicted by the supervisors' statements and that the new medical evidence did not establish a valid diagnosis.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] 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 performance of duty; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.[2]

In order to determine whether an employee sustained a traumatic injury in the performance of duty, the Office must first determine whether "fact of injury" has been established. "Fact of injury" consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the

[1] 5 U.S.C. §§ 8101-8193.

[2] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

employment incident that is alleged to have occurred. The second component of "fact of injury" is whether the incident caused a personal injury and, generally, this can be established only by medical evidence.[3]

An alleged work incident 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 statement must be consistent with the surrounding facts and circumstances and her subsequent course of action. A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident. 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 she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantive evidence.[4] An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[5] 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.[6]

When determining whether the implicated employment factors caused the claimant's diagnosed condition, the Office generally relies on the rationalized medical opinion of a physician.[7] To be rationalized, the opinion must be based on a complete factual and medical background of the claimant[8] and must be one of reasonable medical certainty,[9] explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[10]

ANALYSIS

The Office did not accept that an employment incident occurred while appellant was lifting bags of vegetables, nor that she sustained an injury as a result of the alleged incident. Therefore, the issues are whether appellant has established the employment incident as alleged and whether she sustained a compensable injury as a result of that incident.

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[3] *Ellen L. Noble*, 55 ECAB 530 (2004).

[4] *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Louise F. Garnett*, 47 ECAB 639, 643-44 (1996).

[6] *Constance G. Patterson*, 41 ECAB 206 (1989).

[7] *Conrad Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

[8] *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

[9] *John W. Montoya*, 54 ECAB 306 (2003).

[10] *Judy C. Rogers*, 54 ECAB 693 (2003).

Appellant alleged that, while she was lifting a 50-pound container of potatoes, she felt pain in her back and told her supervisor, who then sent her home. On June 13, 2006 she claimed that this incident occurred on March 1, 2006. Ms. Scott, appellant's department head, controverted this claim, stating that she was on sick leave from March 1 to 3, 2006. She also stated that appellant initially reported that she was injured on February 25, 2006 and sought medical attention on February 27, 2006.

On August 14, 2006 in response to the employing establishment's comments, appellant stated that her injury occurred on February 27, 2006. She indicated that she was on sick leave March 1 to 3, 2006 because of her back pain. Appellant stated that she called her supervisor on March 1, 2006 and told him that Dr. Williams, a Board-certified gynecologist, thought her condition could be "female problems," kidney stones, or a strained disc. However, she also stated that she contacted Dr. Williams to make an appointment on March 6, 2006 and did not see him until March 7, 2006. Dr. Williams confirmed that appellant's first visit to his office occurred on March 7, 2006.

On February 13, 2007 appellant stated that she originally mistook the date of the injury because of the stress she was under. She stated that she was on sick leave because she had the flu from March 1 to 3, 2006 and that she injured herself on March 4, 2006. This third date corresponded with a note made by appellant's supervisor on her timesheet, which stated that she had clocked in, but was unable to work because she had sustained an injury. Appellant stated that she tried to call Dr. Williams on the date of her injury, which was a Saturday, but that he was not available until Tuesday, March 7, 2006. She stated that Dr. Williams was unsure of the cause of her pain. However, Dr. Williams stated that he diagnosed appellant with lumbar sacral strain/sprain.

The Board finds that appellant's statements of the events surrounding her alleged injury contain inconsistencies that cast serious doubt upon the validity of the claim. Appellant provided multiple dates that the employment incident was alleged to have happened. She claimed at different times that the injury occurred on February 25 and 27 and March 1 and 4, 2006. In each instance, she provided different and sometimes inconsistent explanations of the surrounding circumstances, including when she received medical treatment. While an employee's statement of the circumstances surrounding an employment injury is generally of great probative value, appellant has failed to provide a consistent date of injury. The evidence of record casts serious doubt on the validity of her claim. The Board finds that appellant's statements are insufficient to establish that an incident occurred as alleged.

Moreover, that the medical reports of record are not sufficient to establish the occurrence of the alleged injury. Dr. Nunn, an osteopathic physician and a Board-certified psychiatrist, began treating appellant on June 26, 2006, several months after the alleged accident occurred. Though he opined that appellant's back was injured by lifting a 50-pound box of vegetables, he did not provide a consistent date of injury. He stated, alternately, that her injury occurred on March 1 and 4, 2006. Dr. Williams, a Board-certified gynecologist, stated that appellant's initial visit to his office occurred on March 7, 2006. At that time, he diagnosed lumbar sacral strain/sprain. Though his examination was much closer in time to the alleged injury, he did not provide a history of the incident or provide an explanation as to the cause of appellant's

condition. Therefore, the Board finds that the medical reports are insufficient to establish the occurrence of the event as alleged.

Appellant did not establish the occurrence of the employment incident. The Board finds that she has not met her burden of proof to establish that she was injured in the performance of duty.

CONCLUSION

The Board finds that appellant has not established that she sustained an injury in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 23, 2007 and August 18, 2006 are affirmed.

Issued: February 26, 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