



April 10, 2006 appellant came to her office to sign out for the day and he informed her that “I think that I have injured myself.” Ms. Shaw asked appellant what happened and what was he doing. Appellant responded that “I was not lifting any boxes.” He believed that he sustained a recurrent injury. Appellant advised Ms. Shaw that he was going to obtain a CA-1 form from Keisha Miolan, a mission support specialist.

In an April 11, 2006 e-mail message, Ms. Miolan stated that on April 10, 2006 appellant requested a CA-1 form for an injury he sustained at work. Upon receiving his completed claim form, Ms. Miolan was unclear as to whether he was alleging a new injury or a recurrent injury. She telephoned appellant for clarification. Appellant stated that he was claiming a recurrence of disability and that the pain was in the same location. Ms. Miolan advised appellant that she was going to facsimile claims for a recurrence of disability (Form CA-2a) and wage-loss compensation (Form CA-7). She also provided him with his original claim number.<sup>1</sup> In a July 8, 2006 note, Ms. Miolan stated that appellant had filed a CA-2a form in April 2006. Appellant stated that he sustained a recurrence of disability related to a prior injury. Ms. Miolan stated that appellant requested a CA-1 form for a new injury.

The employing establishment controverted the claim. On April 10, 2006 appellant spoke to three staff members and informed each one that he had reinjured his back. He referenced his December 4, 2003 back injury, assigned file number 02-2047324. The employing establishment stated that appellant was given a CA-2a form. Appellant later requested a CA-1 form.

By letter dated July 11, 2006, the Office advised appellant that the evidence submitted was insufficient to establish his claim. It addressed the factual and medical evidence he needed to submit to support his claim of injury.

In a July 29, 2006 statement, appellant related that he originally injured his back on December 4, 2003. He stated that “I do not know the specific thing that caused my back to hurt. All I know [is] it started to hurt and got worse as the day went on.” After seeing Dr. Samuel H.S. The, an attending Board-certified internist, and undergoing a magnetic resonance imaging (MRI) scan, appellant was diagnosed as having disc problems in his lower back. His back condition improved and he did not experience any further problems until April 10, 2006. On that date appellant stated that he hurt his lower back again at work. Dr. The obtained an MRI scan which revealed a lower back injury and prescribed medication and physical therapy. Appellant was off work from April 11 through July 10, 2006. He received physical therapy until July 10, 2006.

By decision dated August 24, 2006, the Office denied appellant’s claim on the grounds that he did not establish that the claimed employment incident occurred at the time, place and in

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<sup>1</sup> Prior to the instant claim, appellant filed a claim, assigned file number 02-2047324, for a back injury he sustained at work on December 4, 2003. By decision dated June 16, 2006, the Office denied his claim on the grounds that the evidence of record failed to establish that he sustained an injury in the performance of duty. In a December 5, 2006 decision, an Office hearing representative set aside the June 16, 2006 decision and remanded the case to the Office for further medical development. By decision dated March 27, 2007, the Office accepted appellant’s claim for lumbosacral strain.

the manner alleged or that he sustained a medical condition causally related to the alleged employment incident.

In a letter dated August 29, 2006, appellant, through his attorney, requested an oral hearing before an Office hearing representative. In a June 13, 2006 medical report, Dr. The stated that on December 8, 2003 appellant was evaluated for low back pain that was caused by lifting boxes at work. A December 9, 2003 examination demonstrated muscle spasm, lumbar lordosis, disc herniation with compression at L5-S1, a diffuse mild bulge at L4-5 with an annular tear which indented the anterior thecal sac and mild to moderate left and right neural foraminal narrowing and a slight disc bulge at L2-3. Dr. The further stated that on April 10, 2006 appellant reinjured his lower back after lifting heavy boxes at work. He repeated an MRI scan on April 12, 2006 for comparison. It showed an increased bulging disc at L3-4 and an annular tear with more reactive edema. Dr. The opined that these conditions were due to appellant's recent injury at work. In an August 18, 2006 report, he reiterated the prior history and findings. Dr. The opined that appellant's low back pain was caused by lifting heavy boxes at work in December 2003 and April 2006.

By decision dated February 26, 2007, an Office hearing representative affirmed the August 24, 2006 decision. He found that the evidence of record was insufficient to establish that the claimed employment incident occurred at the time, place and in the manner alleged.

### **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 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. 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> The employee must also submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup> An

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>4</sup> *See Ellen L. Noble*, 55 ECAB 530 (2004).

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

<sup>6</sup> *Donna A. Lietz*, 57 ECAB \_\_\_\_ (Docket No. 05-1758, issued October 27, 2005); *Alvin V. Gadd*, 57 ECAB \_\_\_\_ (Docket No. 05-1596, issued October 25, 2005); *David Apgar*, 57 ECAB \_\_\_\_ (Docket No. 05-1249, issued October 13, 2005).

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 in 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 regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.<sup>12</sup>

### ANALYSIS

Appellant alleged that he sustained a lower back injury in the performance of duty on April 10, 2006. The Office denied his claim after finding that he did not demonstrate that the specific event occurred at the time, place and in the manner described.

The Board finds that appellant has not established that the April 10, 2006 employment incident occurred, as alleged. Appellant stated that he experienced intermittent lower back pain all day long on April 10, 2006. However, he did not provide any specifics regarding the nature of the April 10, 2006 incident. Appellant stated that he did not specifically know what caused his injury. He only knew that his injury was not caused by lifting boxes.

Dr. The's opinion that appellant's back conditions and pain were caused by lifting heavy boxes at work is not consistent with the history of injury provided by appellant. Although appellant did not know what incident caused his back injury, he specifically advised that it was not caused by lifting boxes at work. The history provided by Dr. The described appellant as having lifted heavy boxes on April 10, 2006.

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<sup>7</sup> Gary J. Watling, 52 ECAB 278 (2001); Shirley A. Temple, 48 ECAB 404, 407 (1997).

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

<sup>9</sup> See Betty J. Smith, 54 ECAB 174 (2002).

<sup>10</sup> *Id.*

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

<sup>12</sup> Gregory J. Reser, 57 ECAB \_\_\_\_ (Docket No. 05-1674, issued December 15, 2005).

Ms. Shaw, a supervisor, stated that on April 10, 2006 appellant informed her that he believed he had injured himself and that the injury did not result from lifting boxes. Appellant told her that he believed he sustained a recurrence of disability related to his prior back injury of December 4, 2003. Similarly, he advised Ms. Miolan, a mission support specialist, that he had sustained a recurrence of disability and requested a CA-2a form although he later requested a CA-1 form for a new back injury.

Under these circumstances, the Board finds there are such inconsistencies in the evidence to cast serious doubt as to whether the April 10, 2006 incident occurred, as alleged. Appellant was provided an opportunity to address the factual aspect of the traumatic injury claim but he failed to do so. Accordingly, the Board finds that appellant failed to substantiate that the April 10, 2006 employment incident occurred, as alleged. Therefore, he has not established an injury in the performance of duty. As appellant has not established the factual aspect of his claim, it is not necessary for the Board to consider the medical evidence of record.<sup>13</sup>

### **CONCLUSION**

The Board finds that appellant has not established that he sustained an injury on April 10, 2006 in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 26, 2007 and August 24, 2006 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: January 29, 2008  
Washington, DC

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

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

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

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<sup>13</sup> *Alvin V. Gadd, supra* note 6.