



controverted the claim, noting that appellant did not seek medical treatment until two days after the alleged incident occurred.

On September 3, 2008 the Office notified appellant that the evidence submitted was insufficient to establish her claim and advised her to provide, within 30 days, additional documentation, including a firm diagnosis and a physician's opinion as to how her injury resulted in the diagnosed condition. It specifically asked appellant to provide a detailed description as to how the injury occurred, including the cause of the injury; statements from any witnesses or other documentation supporting her claim; and the reason she delayed seeking medical treatment.

In a merit decision dated October 10, 2008, the Office denied appellant's claim. It found that the evidence was insufficient to establish that the claimed event occurred as alleged, or that she had a diagnosed condition which could be connected to the claimed event.<sup>1</sup>

### **LEGAL PRECEDENT**

The Federal Employees' Compensation Act<sup>2</sup> provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."<sup>4</sup>

An employee seeking benefits under the Act has the burden of proof to establish 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 timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the "fact of injury," namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or

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<sup>1</sup> Appellant submitted additional evidence after the Office's October 10, 2008 decision; however, the Board cannot consider such evidence for the first time on appeal. The Board's review of a case shall be limited to the evidence in the case record which was before the Office at the time of its final decision. 20 C.F.R. § 10.501.2(c) (2007).

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Id.* at § 8102 (a).

<sup>4</sup> This construction makes the statute effective in those situations generally recognized as properly within the scope of workers' compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

<sup>5</sup> *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.<sup>6</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>7</sup>

The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of employment.<sup>8</sup> An award of compensation may not be based on appellant's belief of causal relationship. Neither the mere fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish a causal relationship.<sup>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury to her back on August 8, 2008.

Appellant claimed in her CA-1 form that the nature of her injury was a back strain which occurred while she was lifting sheets out of a laundry bin and placing them on shelves. She provided no detailed account of and stated no apparent cause for the injury. Appellant presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic

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<sup>6</sup> See *Paul Foster*, 56 ECAB 208 (2004); *Betty J. Smith*, 54 ECAB 174 (2002); see also *Tracey P. Spillane*, 54 ECAB 608 (2003). The term "injury" as defined by the Act, refers to a disease proximately caused by the employment. 5 U.S.C. § 8101(5). See 20 C.F.R. § 10.5(q), (ee).

<sup>7</sup> See *Betty J. Smith*, *supra* note 6.

<sup>8</sup> *Katherine J. Friday*, 47 ECAB 591, 594 (1996).

<sup>9</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

injury, nor has she even alleged that she experienced a specific event, incident or exposure at a definite time, place and manner.<sup>11</sup> She provided no evidence of a causal relationship between the alleged injury and a diagnosed condition.

Appellant's vague recitation of the facts as she perceived them is insufficient to establish that a specific event occurred which caused an injury.<sup>12</sup> She stated that she strained her back while she was engaged in the process of "lifting sheets out of laundry [bins] and placing them on shelves." Appellant did not identify a particular act which caused the alleged back strain, or explain how the alleged injury occurred. She did not allege whether she was lifting two sheets or two hundred, or whether she was bent over or standing or sitting up right while performing the alleged activity. Additionally, appellant's actions surrounding the alleged incident cast serious doubt on the validity of her claim. She did not immediately seek medical treatment and failed to provide notification to her supervisor for a week.<sup>13</sup> There were no witnesses to the alleged incident and no indication that appellant related the alleged event to anyone.

In *Tracey P. Spillane*,<sup>14</sup> an employee filed a claim alleging that she sustained an allergic reaction at work. However, because she did not clearly identify the aspect of her employment which she believed caused her to suffer the claimed condition, but only made vague references to "possibly having a reaction to magazines or latex gloves," the Board held that she had not adequately specified the employment factors which she felt caused her need for medical treatment, nor did she specify details such as the extent and duration of exposure to any given employment factors. Medical reports reflected that the employee had not clearly reported to her physicians that she felt her claimed condition was due to a specific and identifiable employment factor. Similarly, in the instant case, appellant's allegations are vague and do not relate with specificity the cause of the injury (*e.g.*, the fact that she twisted her spine as she lifted heavy linens, or felt a pull as she reached overhead); or the exact and immediate consequence of the injury (*e.g.*, the fact that she fell, stumbled or had to sit down). Therefore, she has not met her burden of proof to establish that she sustained an injury in the performance of duty.<sup>15</sup>

Thus, appellant has failed to establish the fact of injury: she did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place and in the manner alleged or that the alleged incident caused her condition.

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<sup>11</sup> See *Betty J. Smith*, *supra* note 6; see also *Tracey P. Spillane*, *supra* note 6.

<sup>12</sup> See *Dennis M. Mascarenas*, *supra* note 9.

<sup>13</sup> The Board notes that the CA-1 form was dated August 14, 2008, but was received by the Office on August 25, 2008, more than two weeks after the alleged employment incident.

<sup>14</sup> See *Tracey P. Spillane*, *supra* note 6.

<sup>15</sup> As appellant failed to establish that the claimed event occurred as alleged, it is not necessary to discuss the probative value of medical evidence. *Id.* However, the Board notes that appellant did not submit any medical evidence in support of her claim prior to the issuance of the Office's October 10, 2008 decision.

**CONCLUSION**

Appellant has not met her burden of proof to establish that she sustained a traumatic injury to her back in the performance of duty on August 8, 2008.

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2009  
Washington, DC

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

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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