



chest. Appellant stopped work that day. Gary Cowan, director of administration and finance, controverted the claim, arguing that it appeared to be an idiopathic fall and that appellant did not strike any surface including the floor.

By letter dated January 5, 2007, the Office informed appellant of the evidence needed to support his claim. In a December 26, 2006 report, Dr. Suraj K. Tikko, a Board-certified internist, advised that appellant could return to his previous work on December 26, 2006 but should avoid prolonged sitting and standing. In reports dated January 4, 2007, Dr. Jeremie R. Rachunow, Board-certified in family medicine, advised that on December 26, 2006 appellant strained or sprained his back when he bent over to pick up a bag at work, lost consciousness, fell flat on his back and could not get up. He noted appellant's complaints of mid and low back pain radiating into his legs and left foot pain. Dr. Rachunow advised that appellant injured himself while moving, "packing something and moving a box when this happened." He noted a past history of arrhythmia discovered during varicocele surgery and mild borderline hypertension. Dr. Rachunow provided findings on examination and diagnosed lumbosacral neuritis/radiculitis; degeneration of the lumbosacral intervertebral disc, rule-out herniated disc; muscle spasm of the back with stiffness; myalgia/myositis; periformis syndrome on the right; and pain in the right foot. He checked a form box "yes," indicating that the conditions were employment related, advised that appellant could not work and prescribed physical therapy.

By decision dated February 16, 2007, the Office denied the claim on the grounds that appellant did not sustain an injury in the performance of duty, noting that the incident was possibly idiopathic.

On January 3, 2008 appellant, through his attorney, requested reconsideration<sup>1</sup> In a December 20, 2007 report, Dr. David R. Dynof, an orthopedic surgeon, discussed a May 19, 2006 injury.<sup>2</sup> In a February 11, 2008 memorandum, Mr. Cowan informed the Office that appellant was off work from May 20 through December 25, 2006, and on December 26, 2006 reported for work unannounced. He stated that immediately upon appellant's arrival, Mark Falk, director of administration and finance, met with appellant regarding his return to work and appellant submitted medical certification indicating that he could return to work. Mr. Falk discussed appellant's work duties and restrictions he would be required to follow. Mr. Cowan stated that he telephoned appellant at 9:15 a.m. and discussed his return to work and work restrictions. At 11:54 a.m., appellant advised Mr. Falk by e-mail that he would be leaving at 1:00 due to his lack of energy, and left work at 12:28 p.m., indicating that his back was hurting and he had to visit his doctor. He stated that at no time on December 26, 2006 did appellant state that he had lost consciousness or suffered a fall to the floor.

The employing establishment submitted e-mails beginning at 8:51 a.m. on December 26, 2006 when Mr. Falk informed appellant that "for now you can work at the front desk." Mr. Falk related that the contents of appellant's old cubicle had been packed, but as they weighed more

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<sup>1</sup> Appellant also requested reconsideration of a January 11, 2007 decision, concerning a May 19, 2006 injury, adjudicated by the Office under file number xxxxxx946. He has an additional appeal before the Board for that claim, Board Docket No. 08-1835, that will be adjudicated separately.

<sup>2</sup> *Id.*

than 10 pounds, he did not want him moving or unpacking the boxes, and noted that he understood that appellant would be working until 1:30 p.m. In a 9:52 e-mail, Mr. Cowan advised appellant that he was not to lift, remove or move any items or belongs from his current cubicle, and that, if he required the use of any personal belongings, he was to contact Mr. Falk who would arrange for the items to be retrieved. He instructed appellant not to lift, push, pull, attempt to move, or slide items weighing over 10 pounds. Mr. Cowan noted that appellant's job duties that day were to review audit statements, and that a cubicle would be set up the next day when he was advised to report to Mr. Cowan's office at 7:30 a.m. In an 11:54 a.m. e-mail, appellant informed Mr. Falk that he would only be working until 1:00 p.m. as he did not have the energy to work until 1:30 p.m. He stated that he felt a little dizzy before 9:00 a.m. because he was walking back and forth around the office trying to get everything set up, and therefore visited the nurse's station because his back was hurting. Appellant requested that the times he was required to walk back and forth be limited as he was trying to regain energy levels, and when he was assigned a workstation he would need someone to unpack his belongings. In a 12:08 p.m. e-mail, Mr. Falk informed Robert Dietrick and Mr. Cowan that several minutes after he received the 11:54 a.m. e-mail, appellant called and said that, as his back was hurting, he was going to the nurse's office to lie down. He stated that there had been no excessive walking back and forth to his office by appellant, and he had only come to his office once for the meeting earlier that morning, noting that, when he checked on appellant, he was sitting at the front desk. In a 12:30 p.m. e-mail, Mr. Falk noted that appellant returned from the nurse's office and was leaving to see his doctor but would be in the next day.

By decision dated April 7, 2008, the Office denied modification of the February 16, 2007 decision, finding that appellant suffered an idiopathic fall on December 26, 2006.

### **LEGAL PRECEDENT**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. Regardless of whether the asserted claim involves traumatic injury or occupational disease, an employee must satisfy this burden of proof.<sup>4</sup>

Office regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury 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.<sup>5</sup> In order to determine whether an employee 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

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>5</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

conjunction with one another. The first component is whether the employee actually experienced the employment incident that is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>6</sup>

When an employee claims a traumatic injury in the performance of duty, he or she must establish the “fact of injury,” namely, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.<sup>7</sup>

### ANALYSIS

The Board finds that appellant did not meet his burden of proof to establish that he sustained an employment-related back injury on December 26, 2006. The record does not support his allegation that a specific event occurred which caused an injury.<sup>8</sup> On his claim form, appellant alleged that he twisted his back and torso while bending over to put a bag in a cabinet drawer and that he momentarily lost consciousness. He did not allege that he fell. Both Mr. Cowan and Mr. Falk described interactions with appellant that occurred on December 26, 2006. The e-mails that day confirm that appellant advised Mr. Falk that he had no energy and was leaving at 1:00 p.m., noting that he felt a little dizzy before 9:00 a.m. because he was walking back and forth around the office trying to get things set up and had visited the nurse’s station because his back was hurting. Again, appellant did not report a fall. The record does not contain a nurse’s report showing that appellant sought treatment that day. Mr. Falk reported that he did not witness appellant excessively walking, stating that, when he checked on appellant, he was sitting at the front desk. The first mention of a fall was noted in a January 4, 2007 report by Dr. Rachunow, who advised that appellant stated that on December 26, 2006 he bent to pick up a bag at work, loss consciousness, fell down and could not get up.

The Board finds that appellant’s allegations are vague and inconsistent and do not relate with specificity the mechanics of how he sustained an injury on December 26, 2006. In e-mails that day, appellant reported that, due to walking back and forth and setting everything up, he became weak and dizzy and went to see the nurse. On his claim form, submitted the next day, he reported that he twisted his back and torso while bending over to put a bag in a cabinet and momentarily lost consciousness. In neither case did appellant report that he fell. Dr. Rachunow’s report contains the only report of a fall at work. Appellant did not establish that he sustained an injury in the performance of duty on December 26, 2006 because he did not submit sufficient evidence to establish that he actually experienced an employment incident at the time, place, and in the manner alleged.<sup>9</sup>

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<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>7</sup> *Paul Foster*, 56 ECAB 208 (2004).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* The Board notes that, although the Office adjudicated this claim as an idiopathic fall, as discussed above, the record does not support that appellant fell at work on December 26, 2006.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained an injury in the performance of duty on December 26, 2006.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 7, 2008 be affirmed.

Issued: February 9, 2009  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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