

in the performance of duty.¹ Appellant's traumatic injury claim form indicated that she did not stop work.²

On June 17, 2009 the Office advised appellant of the factual and medical evidence necessary to establish her claim and allowed her 30 days to submit such evidence. In particular, it requested that appellant provide a description of how the injury occurred as well as a physician's report with an opinion regarding whether her diagnosed condition was caused or aggravated by the claimed injury.

In a June 24, 2009 telephone memorandum, the employing establishment noted that appellant had originally injured her back on May 19, 2006 and she returned to full duty on May 26, 2006. Appellant sustained a new injury on August 10, 2006 when she lifted a bag at work. As this occurred within 90 days of the original injury, the employing establishment considered it a recurrence and appellant did not file a Form CA-1. Appellant subsequently completed Form CA-1 for the August 2006 incident. The employing establishment noted that it provided an incorrect date of injury on the form as the correct date of injury was August 10, 2006, not August 14, 2006. It also indicated that appellant provided notification within 30 days of the lifting incident and that it was the employer's error as to why she was filing her claim after 30 days.

In a June 24, 2009 letter, a manager from the employing establishment reiterated that the correct date of injury for appellant's traumatic injury claim was August 10, 2006, not August 14, 2006. He also indicated that appellant provided notice of injury to her supervisor on August 10, 2006.

In a July 21, 2009 decision, the Office denied appellant's claim finding that the evidence was insufficient to establish that the incident occurred as alleged and that no medical evidence had been submitted.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act³ has the burden of establishing the essential elements of his 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. These are the essential elements of each

¹ Appellant's Form CA-1 indicated August 14, 2006 as the date of injury. However, the employing establishment noted this was the wrong date, as the actual date of injury was August 10, 2006.

² On June 24, 2009 the employing establishment indicated that appellant had retired on disability. However, the date of appellant's retirement is not of record.

³ 5 U.S.C. §§ 8101-8193.

and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a “fact of injury” has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee’s statements must be consistent with the 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* claim for compensation. 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 and persuasive evidence.⁶

ANALYSIS

The record reflects that appellant was a transportation security officer who claimed a back injury on August 10, 2006 after lifting a bag at work. The Office found that she did not submit sufficient evidence to establish that the claimed work incident occurred as alleged. The Board finds that appellant has not established that the incident occurred as alleged.

Appellant alleges that she injured her back lifting a bag. As noted, the first component of a traumatic injury claim requires appellant to submit evidence to establish that she actually experienced an employment incident at the time, place and in the manner alleged. However, the record does not contain any statements from appellant describing how the lifting incident injured her back. While the evidence indicates that appellant lifts bags in her job, she did not explain where the incident occurred or the circumstances of her alleged injury. Appellant also did not identify any particular work assignment that she was performing when the alleged back injury occurred.

The Office’s June 17, 2009 letter advised appellant of the factual evidence necessary to establish her claim. Appellant did not respond. While the employing establishment clarified the date of the claimed incident, appellant did not provide any detailed description of how the claimed injury occurred. Appellant’s burden of proof includes the submission of sufficient evidence to establish that she experienced the employment incident at the time, place and in the

⁴ *S.P.*, 59 ECAB ___ (Docket No. 07-1584, issued November 15, 2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *Id.*

⁶ *M.H.*, 59 ECAB ___ (Docket No. 08-120, issue April 17, 2008); *Louise F. Garnett*, 47 ECAB 639 (1996).

manner alleged. Furthermore, the Office also requested that she submit medical evidence to support her claim. Appellant did not submit any medical evidence supporting that the work incident of August 10, 2006 caused or contributed to her claimed back condition.⁷

For these reasons, the evidence of record is insufficient to establish that appellant sustained a traumatic injury on August 10, 2006, as alleged.⁸

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on August 10, 2006 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the Office of Workers' Compensation Programs' decision dated July 21, 2009 is affirmed.

Issued: May 18, 2010
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

⁷ Regardless, until appellant establishes work factors alleged to have caused her claimed injury, it is not necessary for the Office consider medical evidence regarding causal relationship. *See S.P.*, 59 ECAB ____ (Docket No. 07-1584, issued November 15, 2007); *Bonnie Contreras*, 57 ECAB 364 (2006).

⁸ The Board notes that appellant submitted a request for oral hearing on July 31, 2009 but the Office did not issue a final decision on this request before the present appeal was filed on August 9, 2009. The Board only has jurisdiction to consider and decide appeals from final Office decisions. 20 C.F.R. § 501.2(c).