United States Department of Labor
Employees' Compensation Appeals Board

C.B., Appellant	)	
and	)	**Docket No. 14-1898**
	)	**Issued: February 5, 2015**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Amarillo, TX, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 26, 2014 appellant filed a timely appeal from a July 28, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant has met her burden of proof in establishing that she sustained a low back injury in the performance of duty.

FACTUAL HISTORY

On April 16, 2014 appellant, then a 32-year-old nursing assistant, filed a traumatic injury, alleging that on April 10, 2014 at 1:30 a.m., a nurse asked her to assist in lifting a nonresponsive resident from the floor. She indicated that she assisted with lifting the resident's legs while the other coworkers lifted the upper body and she felt her back "tweak." Appellant's supervisor,

[1] 5 U.S.C. §§ 8101-8193.

Angela Bowlin, noted on the Form CA-1, that appellant provided conflicting statements about how her back injury occurred. She indicated that appellant reported to John F. Blakley, a manager, that she hurt her back while moving furniture and subsequently indicated that she was injured while lifting a nonresponsive resident.

Appellant submitted emergency department trauma records dated April 14, 2014 in which she reported a mechanism of injury that she "was pulling furniture + felt a pop in her back." In a history and physical report, she complained of back pain which began on Thursday and reported it was a recent injury that involved lifting, turning, and bending while at work. In an emergency department record dated April 14, 2014, Dr. Peter Craig, a Board-certified emergency room physician, diagnosed back pain, lumbar disc degeneration, and sciatica. In a return to work note dated April 14, 2014, he noted that appellant could return to work on April 22, 2014 without restrictions. In emergency room disposition summary, a nurse practitioner noted that appellant was treated for back pain and reported a history of injury that she "was pulling furniture and felt a pop in her back." The nurse diagnosed lumbar disc degeneration and sciatica. In employing establishment health records dated April 15, 2014, a nonidentified health care provider noted that appellant reported that she and two other staff members were assisting a fallen resident and appellant was moving the resident's legs when she felt a "tweak in her back." Appellant reported having to change her scrubs because they were blood stained. She did not seek medical care at that time but went home and took Ibuprophen. Appellant indicated that she reported to work the next shift and was prepping a body of a deceased patient and did not feel well due to a sore back. She indicated that she was off over the weekend and while vacuuming she had so much pain that she "collapsed to knees" and was unable to get up. Appellant reported being taken by ambulance to the emergency room and a magnetic resonance imaging (MRI) scan revealed a herniated disc at L4-5.

Appellant was treated by Dr. Philip J. Lavallee, a Board-certified physiatrist, on April 21, 2014 for a low back injury. In an April 21, 2014 attending physicians report, Dr. Lavallee noted that appellant reported on April 10, 2014 that she was called to a resident's room to assist in lifting a patient weighing 200 pounds and while she was lifting the patient's feet and two other coworkers were lifting the arms, she felt a tweak in her back. He diagnosed mid to lower back sprain/strain with central herniated disc at L4-5. Dr. Lavallee noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity. In an alternate work assignment form dated April 21, 2014, he noted that appellant could return to work with restrictions. On May 7, 2014 Dr. Lavallee diagnosed status post lower back sprain/strain and returned appellant to work full time without restrictions. An April 14, 2014 MRI scan of the lumbar spine, revealed broad-based disc bulging at L4-5, no protrusion and no central canal or foraminal stenosis.

In an e-mail dated April 15, 2014 to Ms. Bowlin, her supervisor, appellant indicated that "I assisted Stephen and Connie with lifting ... off the floor. No sling was used; he was ice cold and nonresponsive."[2] Appellant indicated that she informed Sue Clayton that she hurt her back and her scrubs were soiled with blood. In an April 14, 2014 e-mail, Mr. Blakley noted being contacted by appellant at 6:00 p.m. requesting to take sick leave due to hurting her back while moving furniture. He indicated that at 8:30 p.m. she contacted him and indicated that she hurt her back at work the previous Thursday while lifting a patient and reported her injury to

[2] From the context of the evidence, it appears that the reference to "Connie" is to Connie Monroe.

Ms. Clayton and Steve Lee. Mr. Blakley reported contacting Mr. Lee who was unaware of appellant's injury.

In an April 16, 2014 e-mail, Ms. Clayton noted that the previous Friday at 6:00 a.m. appellant requested to change into scrubs after getting blood on her clothes while in the patient's room. She noted inconsistencies in appellant's story as the patient passed away at 11:30 p.m. the previous evening. In an April 17, 2014 e-mail, Mr. Lee noted that on the evening of April 10, 2014, appellant did not verbalize that she had a back injury or pain. He noted that appellant got blood on her scrubs and requested new clothing but did not complain of an injury. In an April 18, 2014 e-mail, Stephen G. Sill, appellant's coworker, noted that on April 10, 2014 at approximately 1:00 a.m. he entered a resident's room to administer medication and discovered the resident lying on the floor. He requested assistance from appellant and Ms. Monroe to lift the resident onto the bed. Mr. Sill and Ms. Monroe got under each of the residents arms while appellant held his legs and lifted him onto the bed. Mr. Sill noted that appellant reported getting blood on her scrubs from an open scab on the resident's knee and he instructed her to speak to the house supervisor to obtain new scrubs. In an April 18, 2014 e-mail from Ms. Bowlin to Jennifer J. Smith, human resources specialist, she noted that appellant did not verbalize that she experienced a back injury on the night of April 10, 2014. Ms. Bowlin indicated that appellant requested new scrubs because they were stained with blood, but she never reported an injury.

In a memorandum dated April 21, 2014, the employing establishment disputed appellant's claim because the employing establishment believed the injury was unrelated to her job. Ms. Smith referenced medical notes from April 14, 2014 which did not support a work-related injury. In a report of contact, Ms. Bowlin noted that on April 16, 2014 at 7:46 p.m. appellant texted her noting that she hurt her back lifting a resident. She attended a staff meeting at 10:00 p.m. and noted speaking to Mr. Blakley who received two calls from appellant regarding her back injury. Mr. Blakley indicated that appellant contacted him at 6:00 p.m. requesting sick leave because she hurt her back moving furniture. He noted that appellant called him back at 8:30 p.m. requesting sick leave and indicated that she hurt her back at work while lifting a patient and informed Ms. Clayton and Mr. Lee of her injury. Ms. Bowlin contacted Mr. Lee and Ms. Clayton and both were unaware of appellant's back injury. On April 16, 2014 she received an e-mail from appellant who noted Ms. Clayton was too overwhelmed to report her injury. Appellant indicated that she, Mr. Sill, and Ms. Monroe lifted a resident who was nonresponsive off the floor without using a lift.

In letters of contravention dated May 9 and 23, 2014, the employing establishment controverted the claim because appellant provided conflicting scenarios as to how her injury occurred. Additionally, it indicated that the April 14, 2014 emergency department trauma record reported that the injury occurred after appellant was pulling furniture. In a statement dated April 17, 2014, Mr. Lee noted that appellant did not report a back injury on April 10, 2014; rather she reported getting blood on her scrubs. Similarly, an April 18, 2014 statement from Mr. Sill, an eyewitness, indicated that appellant did not mention a back injury; rather she indicated that she got blood on her scrubs while lifting a resident. Additionally, Mr. Blakley indicated that on April 14, 2014 appellant reported injuring her back while moving furniture and then later that evening she reported injuring her back while lifting a resident. The employing establishment further noted that she continued to work on April 10, 2014 and was off three days before returning back to work on April 14, 2014.

Appellant submitted a May 11, 2014 report of emergency treatment in which Dr. Lavallee noted with a checkmark that the injury or illness was work related and appellant was able to return to work on May 12, 2014. In an emergency room progress note dated May 11, 2014, Dr. Anuradha Gopalachar, a Board-certified emergency room physician, treated appellant for low back pain. Appellant reported that on April 10, 2014 she was lifting a patient in the nursing home and had low back pain. She sought treatment from the emergency room and an MRI scan revealed a herniated disc. Dr. Gopalachar noted that appellant had an underlying health problem before this event. He diagnosed left lumbar strain and took appellant off work.

By letter dated June 18, 2014, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim and requested that she submit such evidence.

In a June 28, 2014 statement, appellant indicated that on April 10, 2014 she worked from 7:30 p.m. to 8:00 a.m. She indicated that around 1:00 a.m. she was assisting Mr. Sill with a nonresponsive resident. Appellant reported being instructed to lift both of the resident's legs while the other employees lifted the upper half of the body. She noted that upon lifting the resident she felt pain in her lower back. Appellant noted the resident was bleeding on his leg which soiled her scrubs. She noted reporting her injury to Ms. Clayton who informed her that she was overwhelmed but would call "Steve" to obtain new scrubs and inform him of her injury. Appellant indicated that two and a half hours later she received new scrubs and was given Motrin and a heating pad. She noted her supervisor, Ms. Clayton, told her that she "reported everything" so appellant went home and rested. Appellant subsequently reported experiencing pain when vacuuming her home and she could not move. She allegedly called her job and informed management of her condition but learned that Ms. Clayton failed to document the work incident. Appellant indicated that human resources instructed her to prepare a Form CA-1 since Ms. Clayton did not follow policy.

In a July 18, 2014 letter of contravention, Ms. Smith advised that appellant resigned on June 3, 2014. She noted the employing establishment controverted appellant's claim because appellant reported inconsistent stories as to how the traumatic injury occurred.

In a decision dated July 28, 2014, OWCP denied appellant's claim on the basis that the evidence did not support that the injury or events occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 FECA, that the claim was filed within the applicable time limitation of FECA, 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 is causally related to the employment injury."[3] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[4]

[3] *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[4] *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP 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.[5] In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.[6] 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.[7] 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.[8] 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.[9] Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative valued and will stand unless refuted by strong or persuasive evidence,[10] an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.[11]

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[12]

ANALYSIS

Appellant filed a claim on April 16, 2014 alleging that on April 10, 2014 she assisted coworkers with lifting a nonresponsive resident from the floor. She reported assisting coworkers with lifting the resident's legs while others lifted the upper body and she felt her back "tweak." However, the Board notes that there are inconsistencies in the evidence which cast serious doubt

[5] *Supra* note 3.

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

[7] *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

[8] *Id.* at 255-56.

[9] *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

[10] *Robert A. Gregory*, 40 ECAB 478 (1989).

[11] *Joseph A. Fournier*, 35 ECAB 1175 (1984).

[12] *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

upon the validity of the claim. The Board finds that the claimed employment incident did not occur as alleged.

Appellant submitted differing statements regarding to how her low back injury occurred. She initially stated on the CA-1 form signed on April 16, 2014, that on April 10, 2014 at 1:30 a.m. she assisted coworkers with lifting a nonresponsive resident, and while she lifted his legs the other coworkers lifted the upper body and she felt her back "tweak." On April 14, 2014 Mr. Blakley, a manager, noted that appellant contacted him at 6:00 p.m. requesting to take sick leave because she hurt her back while moving furniture. He indicated that subsequently at 8:30 p.m. appellant contacted him and indicated that she hurt her back at work the previous Thursday while lifting a patient. Similarly, on April 17, 2014 Mr. Lee noted that on the evening of April 10, 2014, appellant did not verbalize that she had a back injury at work. He noted that appellant got blood on her scrubs and requested a new pair, but did not complain of an injury or discomfort. On April 18, 2014 Mr. Sill, a witness, noted that on April 10, 2014 at approximately 1:00 a.m. he entered a resident's room to administer medication and discovered the resident lying on the floor. He requested assistance from appellant and Ms. Monroe in lifting the resident and he and Ms. Monroe lifted the residents arms while appellant held his legs and lifted him onto the bed. Mr. Sill indicated that appellant did not report an injury, rather, she noted getting blood on her scrubs from the resident. Similarly, on April 16, 2014 Ms. Clayton noted that the previous Friday appellant requested to change into scrubs after getting blood on her clothes while in a resident's room. In a report of contact, Ms. Bowlin noted that on April 16, 2014 at 7:46 p.m. appellant texted her noting that she hurt her back lifting a resident. She attended a staff meeting at 10:00 p.m. and noted speaking to Mr. Blakley who indicated receiving two calls from appellant, at 6:00 p.m. appellant advised that she needed sick leave because she hurt her back moving furniture and then subsequently at 8:30 p.m. she reported hurting her back while lifting a patient. Ms. Bowlin contacted Mr. Lee and Ms. Clayton, and both were unaware of appellant's back injury but noted that she got blood on her scrubs.

Similarly, the medical evidence also offers a varying history of injury. In emergency department trauma records dated April 14, 2014, appellant reported a mechanism of injury that she "was pulling furniture + felt a pop in her back." In a history and physical report of April 14, 2014, she complained of back pain which began on Thursday and reported it was a recent injury that involved lifting, turning, and bending while at work. In an emergency room disposition summary of April 14, 2014, a nurse practitioner noted that appellant was treated for back pain and reported a history of injury that she "was pulling furniture and felt a pop in her back." In an April 21, 2014 employee health record note, Dr. Lavallee noted treating appellant for a low back injury which she reported occurred on April 10, 2014 when she was helping to lift a resident. Under these circumstances, the lack of confirmation of the claimed incident and inconsistencies about the manner of how appellant was injured cast serious doubt upon the validity of the claim.

Additionally, there were no contemporaneous statements from persons present at the employing establishment supporting that the incident occurred as alleged. Rather, Mr. Sill, who was present when the alleged back injury occurred, indicated that appellant did not report that she injured her back while lifting a patient; rather, she only noted getting blood on her scrubs. While 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, the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action. These notes do not relate a consistent history of injury. Appellant also has not provided an explanation for these inconsistent accounts of how the claimed injury occurred.

For these reasons, the Board finds that appellant has not established that the claimed incident occurred as alleged. As appellant has not established that the April 10, 2014 incident occurred as alleged, it is not necessary for the Board to consider the medical evidence regarding causal relationship.[13] Consequently, she has not met her burden of proof in establishing her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained a low back injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the July 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

[13] *See S.P.*, 59 ECAB 184 (2007).