

employing establishment controverted the claim, noting that appellant did not receive medical treatment until 21 days after the alleged incident.

In support of his claim, appellant submitted a November 8, 2007 health care note from the Department of Veterans Affairs (VA), from a physician whose name is not legible, advising that appellant was unable to lay or work on his back or his side.

By correspondence dated December 6, 2007, the Office requested additional information concerning appellant's claim.

In a November 5, 2007 note, Dana Hess, a physician's assistant, noted that appellant was unable to lift more than 40 pounds or to work lying on his back for 90 days. A February 20, 2001 decision of the VA awarded service-connected disability for various conditions.

In an October 17, 2007 statement, Kim M. Corcoran, appellant's supervisor, advised that appellant reported sustaining an injury at work on that day. She explained that appellant was working under his trailer in a squatting position and, when he attempted to get out from under the trailer, he struck his back on a side marker light. Ms. Corcoran stated that appellant informed her that he was in moderate pain for a few minutes, but that he continued to work. He later informed her that he was experiencing some stiffness but was able to continue working and did not need medical attention.

In a December 8, 2007 statement, appellant reiterated that he was injured on October 17, 2007 when he struck his back on a side marker light protruding from the trailer under which he was working. He noted that he had a preexisting back condition and that he believed the October 17, 2007 incident aggravated his condition. Appellant explained that he reported his injury to his supervisor, Ms. Corcoran, but that she did not advise him to fill out a traumatic injury claim. He believed that he was not eligible for workers' compensation because of his prior back condition, which was service connected. Appellant did not realize he could file a claim until he called the Office.

Appellant also provided a December 19, 2007 report from Dr. Anand Deshmukh, a Board-certified internist, who noted appellant's history of a back injury at work on October 17, 2007. Dr. Deshmukh explained that appellant was squatting down under a trailer and struck his back on a side marker light. He noted that appellant had a history of severe back pain, particularly while laying on his back or side. On physical examination, conducted on December 18, 2007, Dr. Deshmukh noted tenderness over the lumbosacral region with paraspinal muscle spasm as well as radicular pain and weakness in the lower extremities, particularly the right lower extremity. He recommended that appellant undergo further diagnostic testing but did not render a diagnosis.

By decision dated January 10, 2008, the Office denied appellant's traumatic injury claim on the grounds that appellant had not established that an incident occurred in the performance of duty and had not submitted medical evidence rendering a diagnosis that could be connected to the claimed work-related events.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² 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.³

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. 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.⁴ 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.⁵ An employee has not met his or her burden of proof of 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.⁶ 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.⁷ However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative force and will stand unless refuted by strong or persuasive evidence.⁸

The second component in establishing fact of injury is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁹ As

¹ 5 U.S.C. §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See Louise F. Garnett*, 47 ECAB 639 (1996).

⁵ *See Gene A. McCracken*, 46 ECAB 593 (1995).

⁶ *See Louise F. Garnett*, *supra* note 4.

⁷ *Linda S. Christian*, 46 ECAB 598 (1995).

⁸ *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

⁹ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

part of this burden, the claimant must present rationalized medical evidence based upon a complete factual and medical background showing causal relationship.¹⁰

ANALYSIS

The Office denied appellant's traumatic injury claim on the grounds that he had failed to establish that an incident occurred as alleged and that he had not submitted a medical report rendering a diagnosis related to employment events. The Board finds that appellant has established that the October 17, 2007 incident occurred in the performance of duty. However, he has not established that the incident caused or contributed to his back condition.

Appellant reported that he was injured on October 17, 2007, when he struck his back on a side marker light protruding from a trailer under which he was working. His supervisor, Ms. Corcoran, stated that appellant reported his injury to her on the same day. She agreed with appellant's version of events and supported that an incident occurred when he struck his back on a side marker light. Appellant repeated the same history to Dr. Deshmukh when he was examined on December 18, 2007. The Board finds that appellant's stated history of injury is consistent and supported by Ms. Corcoran's statement. As noted, an employee's statement that an incident occurred in a certain time, place and manner holds great probative force and will stand unless refuted by strong and persuasive evidence.¹¹ There is no evidence of record to dispute that events did not take place as alleged. On the contrary, the record consistently supports appellant's version of events. Appellant also promptly reported the incident to his supervisor and provided a reasonable explanation for why he did not sooner seek medical treatment or file a claim form. There are no such inconsistencies in the factual and medical evidence to cast serious doubt on the validity of appellant's claim. Accordingly, appellant has established that an incident occurred in the performance of duty on October 17, 2007, at the time, place and in the manner alleged.

However, the Board finds that appellant has not met his burden of proof in establishing that the incident caused a personal injury. Appellant has not submitted sufficient medical evidence that relates his back condition to the employment incident.¹² In support of his claim, he provided two work restriction notes, one from Mr. Hess and one from the VA. Neither health care provider addressed whether the October 17, 2007 incident caused or contributed to an injury. The note by Mr. Hess, a physician's assistant, cannot be considered medical evidence as a physician's assistant is not a "physician" as defined by section 8101(2) of the Act.¹³ While the November 18, 2007 note is signed by a physician, the physician's name is illegible and the note

¹⁰ *Calvin E. King*, 51 ECAB 394 (2000); *Joseph T. Gulla*, 36 ECAB 516 (1985).

¹¹ *Id.*

¹² On appeal appellant submitted additional medical evidence. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching its final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c).

¹³ See *J.M.*, 58 ECAB ____ (Docket No. 06-2094, issued January 30, 2007). See 5 U.S.C. § 8101(2) (defines the term "physician" as it is used in the Act).

does not relate a diagnosed condition to the work incident of October 17, 2007. Thus, this evidence is insufficient to establish appellant's claim.

Appellant also provided a December 19, 2007 report from Dr. Deshmukh. Although Dr. Deshmukh noted that appellant had a history of a back condition and related the history of the October 17, 2007 employment incident, he did not render a diagnosis or address how the employment incident caused or aggravated a diagnosed condition. He did not address the nature or extent of appellant's preexisting back condition or explain how the incident caused or contributed to any disability for work. The Board has held that a person who claims benefits for a work-related condition has the burden of establishing by the weight of the medical evidence a firm diagnosis of the condition claimed and a causal relationship between that condition and factors of federal employment.¹⁴ Because Dr. Deshmukh did not diagnose a specific condition and relate such condition to the accepted employment incident, the Board finds that the medical evidence is insufficient to establish that appellant sustained a compensable injury in the performance of duty.

CONCLUSION

The Board finds that appellant has not met his burden of proof in establishing that he sustained a traumatic injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the January 10, 2008 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 22, 2008
Washington, DC

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

David S. Gerson, Judge
Employees' Compensation Appeals Board

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

¹⁴ *E.g., Patricia Bolleter*, 40 ECAB 373, 377 (1988).