

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

February 2, 2012 after “Mr. Jackson” threw materials at him, pushed him against the wall, choked him and brandished a razor.<sup>2</sup> Andre Shelborne, his supervisor, controverted the account: “Mr. Jackson in my presence did not throw any supplies at or around [appellant]. Neither did Mr. Jackson possess a razor in his hand at any time during this incident.” Appellant stopped work on February 2, 2012 and returned on February 4, 2012.

OWCP informed appellant in a March 1, 2012 letter that additional evidence was needed to establish his claim. It gave him 30 days to submit a factual statement detailing the purported work event on February 2, 2012 and a medical report from a qualified physician explaining how this incident led to a neck condition.

In a February 13, 2012 status note, Dr. Robert H. Meyer, a Board-certified emergency physician, released appellant to full-time duty effective February 14, 2012. Appellant also provided unsigned February 13, 2012 patient home care instructions for strained neck muscles and ligaments.

By decision dated March 29, 2012, OWCP denied appellant’s claim, finding that the evidence did not establish that an employment incident occurred on February 2, 2012 as alleged.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,<sup>3</sup> including that he is an “employee” within the meaning of FECA and that he filed his claim within the applicable time limitation.<sup>4</sup> The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup>

An employee’s statement 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 or persuasive evidence.<sup>7</sup>

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<sup>2</sup> The case record indicates that Mr. Jackson was appellant’s coworker.

<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden in 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. Circumstances such 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 statement in determining whether a *prima facie* case has been established.<sup>8</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 specific employment factors identified by the claimant.<sup>9</sup>

### **ANALYSIS**

The Board finds that the case is not in posture for decision.

The case record indicates that appellant filed a traumatic injury claim on February 9, 2012. In a March 1, 2012 letter, OWCP informed him that additional factual and medical evidence was needed to establish his claim and that he would have 30 days to submit the requested evidence. After 28 days elapsed, OWCP denied appellant's claim.

If a claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required.<sup>10</sup> In this case, because OWCP improperly issued its decision before the end of the minimum 30-day period, the case shall be remanded for further development consistent with OWCP regulations. Thereafter, OWCP shall render an appropriate merit decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>8</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>10</sup> 20 C.F.R. § 10.121.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 29, 2012 decision of the Office of Workers' Compensation Programs be set aside and the case remanded for further action consistent with this decision of the Board.

Issued: November 20, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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