

a package.” The employing establishment did not controvert the claim, but challenged continuation of pay as it did not receive notice of the claim within 30 days.

On January 11, 2014 Dr. Lonnie A. Teague, Board-certified in family practice, evaluated appellant at the emergency room for back pain.

By letter dated July 22, 2014, OWCP advised appellant that as his claim originally appeared to be minor with no time lost from work, it had approved a limited amount of medical expenses, however, it was then formally adjudicating his case. It requested that he provide additional factual and medical information in support of his claim, including a description of the occurrence of the injury and a detailed medical report addressing the causal relationship between any diagnosed condition and work factors.

In an emergency room report dated January 11, 2014, Dr. Teague obtained a history of appellant experiencing back pain “since yesterday when he turned around in the [employing establishment] delivery vehicle that he was driving and tried to lift a box twisting while lifting.” He interpreted x-rays as showing spondylosis especially at L5-S1. On examination, Dr. Teague found tenderness at the left S1 joint on examination. He diagnosed lower back pain.

By decision dated September 4, 2014, OWCP denied appellant’s claim on the grounds that he did not establish an injury on January 10, 2014 as alleged, noting that he did not respond to its request for additional factual information. It further found that the medical evidence was insufficient to show that he sustained any diagnosed condition as a result of the alleged January 10, 2014 employment incident.

On appeal, appellant contends that he was injured at work and that OWCP should pay for his medical expenses.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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; 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner

² 5 U.S.C. § 8101 *et seq.*

³ *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

⁴ *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

alleged, by a preponderance of the reliable, probative, and substantial evidence.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.⁶ An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.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 doubt on an employee's statements.⁹ However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹⁰

ANALYSIS

On June 13, 2014 appellant filed a claim alleging that he sustained an injury to his right lower back while lifting a package on January 10, 2014. OWCP denied the claim after finding that he failed to establish the occurrence of the January 10, 2010 work incident. It further found that the medical evidence was insufficient to support a causal relationship between the alleged January 10, 2010 employment incident and a diagnosed condition.

The Board finds that appellant has established the occurrence of the January 10, 2014 work incident. While he did not file a claim until June 13, 2014, appellant sought medical treatment the day after the injury. In an emergency room report dated January 11, 2014, Dr. Teague related that appellant provided a history of back pain beginning the day before after he tried to lift a box in the back seat of his work delivery vehicle. As noted, 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 or persuasive evidence.¹¹ The employing establishment did not challenge the occurrence of the employment incident and the record contains no inconsistencies in the evidence sufficient to cast doubt on the validity of the claim.¹²

⁵ *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ *Id.*

⁸ *See Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *Linda S. Christian*, 46 ECAB 598 (1995).

¹⁰ *Gregory J. Reser*, 57 ECAB 277 (2005).

¹¹ *See B.B.*, 59 ECAB 234 (2007); *Caroline Thomas*, 51 ECAB 451 (2000).

¹² *See supra* note 8.

The Board therefore finds that appellant has established that the January 10, 2014 incident occurred as alleged. The issue, consequently, is whether the medical evidence establishes that he sustained an injury as a result of this incident.

The Board finds that appellant has not established that the January 10, 2014 employment incident resulted in an injury. The determination of whether an employment incident caused an injury is generally established by medical evidence.¹³

In a January 11, 2014 emergency room report, Dr. Teague discussed the January 10, 2014 work incident. He related that x-ray showed spondylosis especially at L5-S1. On examination, Dr. Teague found left S1 joint tenderness. He diagnosed lower back pain. Dr. Teague, however, did not attribute the spondylosis or lower back pain directly to the January 10, 2014 work incident. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of diminished probative value on the issue of causal relationship.¹⁴ Further, the Board has held that pain is a general description of a symptom and not a firm medical diagnosis.¹⁵ Dr. Teague's report, therefore, is insufficient to meet appellant's burden of proof to establish that he sustained an injury on January 10, 2014.

On appeal appellant argues that OWCP should pay his medical bills as he sustained an employment injury. As discussed, the medical evidence is insufficient to establish that he sustained a diagnosed medical condition as a result of the January 10, 2014 work incident. It is appellant's burden to show that any specific condition or disability for work for which he claims compensation, including medical benefits, is causally related to that employment injury.¹⁶ Regarding payment of medical expenses, the record does not establish that the employing establishment issued a Form CA-16, as it contested the claim. The Form CA-16 would have created a contractual agreement for payment of emergency medical care. Additionally, there is no evidence of an emergency or other unusual circumstance.¹⁷ Therefore, the Board finds the medical evidence is insufficient to support reimbursement of medical expenses.¹⁸

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 and 20 C.F.R. §§ 10.605 through 10.607.

¹³ *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

¹⁴ *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *Conard Hightower*, 54 ECAB 796 (2003).

¹⁵ *See R.H.*, Docket No. 14-1495 (issued November 19, 2014); *B.P.*, Docket No. 12-1345 (issued November 13, 2012).

¹⁶ *See J.W.*, Docket No. 12-1709 (issued January 9, 2013).

¹⁷ Under section 8103 of FECA, OWCP has broad discretionary authority to approve unauthorized medical care which it finds necessary and reasonable in cases of emergency or other unusual circumstances. 5 U.S.C. § 8103; 20 C.F.R. § 10.304; *see also L.B.*, Docket No. 10-469 (issued June 2, 2010).

¹⁸ In order to be entitled to reimbursement for medical expenses, the employee must establish that the expenditures were incurred for treatment of the effects of an employment-related injury. Causal relationship is established by the employee's submission of rationalized medical opinion evidence. *See, e.g., K.B.* and U.S. Postal Service, Docket No. 12-1438 (issued March 27, 2013).

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on January 10, 2014 in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the September 4, 2014 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: April 21, 2015
Washington, DC

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

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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