



December 7, 2014, which was first reported on December 10, 2014. The location of the injury was reported as Denver NDC, dock 13.

On the reverse of the claim form appellant's supervisor reported that appellant stated he was injured on a Sunday, a day when he was not scheduled to work. He checked a box to indicate that appellant was not in the performance of duty. The supervisor also noted "Employee has made conflicting dates of injury. He stated that it occurred on Sunday, December 7, 2014, to another supervisor, the injury occurred on Saturday, December 6, 2014. Employee was walking upright and normal. As employee left office he was limping."

The employing establishment controverted appellant's claim by letter dated December 18, 2014. It challenged the date of the alleged incident. The letter requested a full, careful development of appellant's claim because appellant reported to one supervisor, Gary Collier, that he injured himself on December 7, 2014, but told another supervisor that the injury occurred on December 6, 2014. In a December 10, 2014 statement, submitted with the controversion letter, Supervisor Genny Halliwill stated that appellant had spoken of his sore back on December 9, 2014 and he stated that it began to hurt on Monday, December 8, 2014. She stated that appellant was unsure whether his pain was related to work. Supervisor Halliwill stated that appellant told her he could work on December 9, 2014 and she then assigned him to unload a trailer at one of the loading docks. The employing establishment noted that appellant had not worked December 7 or 8, 2014.

On December 9, 2014 appellant was transported by ambulance from work to the emergency room at the Rose Medical Center. The record is unclear as to who requested the ambulance. Appellant complained of lumbar pain which had started three days earlier. In an emergency department report of December 9, 2014, Dr. Matthew J. McDevitt, an osteopath, noted that "bending and lifting" caused injury. His notes further state, "[Appellant] reports on Friday moving a large crate with a pallet jack and straining his lower back. Pain initially controlled with PRN ibuprofen however today at work lifting boxes pain increased to 10/10 level...."

Appellant followed-up for treatment on December 12, 2014 with Concentra Medical Center. A December 12, 2014 report prepared by Dr. Kirk Holmboe, an osteopath, contained a more extensive history:

"Patient was at work three days ago and was pulling a container of mail when he developed pain in his lower back. He took two days off of work and took ibuprofen and applied heat. [Appellant] is feeling much better today but feels stiff especially in the morning and after sitting. He has difficulty standing up straight. [Appellant] has no pain in either leg. He was seen about four months ago for similar symptoms and was given some medication and after about two weeks felt fine. [Appellant] has been a mail handler for three weeks. He went into work today and finds that he has pain with certain pulling activities."

Appellant's date of injury was noted as December 9, 2014.

OWCP advised appellant that it did not have enough information to establish that he actually fell at work. It also advised him that it had no diagnosis of injury. Appellant was advised of the evidence needed to support his claim and was afforded 30 days to respond.

Following its development letter, OWCP received both medical and nonmedical evidence. The record contains a copy of a disability slip from the Rose Medical Center dated December 9, 2014 which excused appellant from work for two days. A December 9, 2014 emergency room report from the Rose Medical Center related a primary diagnosis of back sprain. A copy of the December 10, 2014 statement by Supervisor Halliwill was resubmitted.

Physical therapy notes dated December 12 and 17, 2014, and form reports were received. The report dated December 12, 2014 by Dr. Holmboe noted that appellant should be off work from December 12 to 17, 2014. Appellant was allowed to return to work with temporary restrictions on lifting, carrying, pushing, and pulling. OWCP also received a physical therapy note dated December 12, 2014 documenting appellant's care.

A continuation of pay (COP) nurse's report dated December 22, 2014 noted that appellant had returned to regular work, but had been unable to continue because of back pain. A December 23, 2014 note prepared by Dr. Holmboe continued appellant's restrictions on lifting, walking, standing, and bending. Dr. Holmboe noted that appellant was feeling better and had less pain, but was concerned about returning to heavy lifting.

On December 27, 2014 appellant signed a note declining an offer of limited-duty work. He noted that he was moving out of state. The employing establishment terminated appellant's employment on December 29, 2014.

The record contains a Colorado Department of Labor and Employment form signed by Dr. Holmboe on April 27, 2015 which notes that appellant was expected to reach maximum medical improvement (MMI) on February 13, 2015 and that he had returned to work.

In a decision dated June 19, 2015, OWCP denied appellant's claim because the evidence of record did not support that the event appellant described occurred as alleged. The decision also found that appellant did not submit any medical evidence to establish that a diagnosed condition resulted from the alleged incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish 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 the injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury. 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.<sup>2</sup>

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<sup>2</sup> *M.H.*, 59 ECAB 461 (2008).

When an employee claims that the injury was sustained in the performance of duty, the employee must submit sufficient evidence to establish that a specific event, incident, or exposure occurred at the time, place, and in the manner alleged. The employee must also establish that the event, incident, or exposure caused an injury.<sup>3</sup>

Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following an 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* case. An employee has not met his or her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. However, an employee's statement that an injury occurred at a given time and place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>4</sup>

### ANALYSIS

The June 19, 2015 decision by OWCP denied appellant's claim regarding the alleged traumatic injury to his low back on December 7, 2014. The Board finds that appellant failed to meet his burden of proof and will affirm OWCP's decision.

The Board notes that appellant has failed to supply a description of his alleged incident. He has not described in detail the circumstances of his alleged fall. The record contains significantly different mechanisms of injury. On his claim form appellant alleged that he fell on Sunday, December 7, 2014.

In a Rose Medical Center emergency department note dated December 9, 2014, there is a notation that appellant injured his back while "bending and lifting" that same Rose Medical Center note reports that he "reports on Friday moving a large crate with a pallet jack and straining his lower back." That note was dictated by Dr. McDevitt.

In a Concentra note from a visit on December 12, 2014, the injury date is listed as December 9, 2014. The note is dictated by Dr. Holmboe, appellant's treating physician, and the mechanism of injury is described as follows: "Patient was at work three days ago and was pulling a container of mail when he developed pain in the lower back." The same report also notes a similar set of symptoms experienced by appellant four months before he experienced the onset of symptoms in this claim.

Appellant was also unclear about the date of his injury. The employing establishment asserts that he reported an injury each day from December 6 through 8, 2014. It reports that appellant talked to three different supervisors about his low back complaints.

Appellant was requested by OWCP to provide a detailed description of what happened to him. He has not responded to the December 18, 2014 development letter with a clear, specific

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<sup>3</sup> E.A., 58 ECAB 677 (2007).

<sup>4</sup> Christine S. Herbert, 49 ECAB 616 (1998).

allegation of the time, place, and manner of his alleged injury. The inconsistencies in the alleged date of the occurrence and mechanism of injury and his failure to fully respond to the development letter from OWCP cast doubt on appellant's claim of injury.

Where a claimant does not establish an employment incident alleged to have caused an injury, it is unnecessary to consider any medical evidence.<sup>5</sup>

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish a back injury on December 7, 2014 in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated June 19, 2015 is affirmed.

Issued: April 20, 2016  
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>5</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006).