



Chamma, Board-certified in preventive medicine, related that appellant stated that he was walking on October 3, 2001 when he “encountered” a pain in his back, radiating down into his toes. Dr. Chamma also noted that appellant stated that he was unsure about the mechanism of injury, and that the pain began gradually. He diagnosed lumbar radiculopathy, lumbar strain and hip/pelvic pain. Dr. Chamma also noted degenerative changes in the lumbosacral spine and mild degenerative arthritis involving the left hip as demonstrated by x-ray. In a Form CA-17 duty status report dated October 10, 2001, Dr. Chamma wrote, “Carrier was walking and felt a pain in his back that radiated down his left leg.” In a Form CA-17 duty status report dated October 17, 2001, under the same section requested a description of how the injury occurred, Dr. Chamma wrote, “walking on route,” “lower back pain and [pain] in left leg.”

In a report dated October 29, 2001, Dr. Thomas J. Cartwright, a specialist in orthopedic surgery, stated that he had been treating appellant for left-sided back, buttock and leg pain, which he had experienced since October 3, 2001 when he was injured while performing his job as a letter carrier, when he walked into a ditch, straining his back. In a Form CA-20, attending physician’s report, dated December 3, 2001, Dr. Chamma, in the section pertaining to “history of injury,” stated that on October 3, 2001 appellant was walking and stepped into a ditch and felt pain which started in his back and now radiated to his left leg and toes.

By letters dated January 25, 2002, the Office advised appellant that he needed to submit additional factual and medical evidence in support of his claim. The Office stated that appellant had 30 days to submit the requested information. Appellant did not respond to this request within 30 days.

By decision dated March 8, 2002, the Office denied appellant’s claim. The Office stated that it had requested additional factual and medical evidence by letter dated January 25, 2002, but that appellant had failed to respond to this request.

By decision dated July 15, 2002, the Branch of Hearings and Review denied appellant’s request for a hearing on the grounds of untimeliness.

By letter dated August 5, 2002, appellant requested reconsideration. Appellant stated:

“On October 3, 2001 while walking on my route from 4814 Bostic to 8215 Lockwood with my pouch on my right shoulder for 4 blocks (about 35 to 40 pounds) I stepped into a ditch and was about to climb to the other side when I felt a pain in my lower back. I continued to deliver mail but noticed the more I walked the pain increased. By the time I had completed my route I could not walk ... the pain had [traveled] across my back to my hip and down my left leg. I reported the incident on [F]orm 3971, explaining why it took me an additional hour to complete my route.”<sup>1</sup>

Appellant also provided the name of someone whom he claimed had seen him that day and had asked him what was wrong, due to the way he was walking.

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<sup>1</sup> This report to which appellant referred is not contained in the instant record.

By decision dated January 27, 2003, the Office denied appellant's request for reconsideration.

By letter dated March 26, 2003, appellant requested reconsideration.

By decision dated August 15, 2003, reviewing the case on the merits, Office denied appellant's request for modification. The Office stated that appellant provided inconsistent statements regarding how his alleged injury occurred; therefore, the Office found that he had not met his burden to establish fact of injury.

By letter dated September 16, 2003, appellant requested reconsideration. Appellant submitted copies of his October 5, 2001 Form CA-1 and his response to the Office's January 25, 2002 developmental letter, but did not submit any additional medical evidence.

By decision dated January 21, 2004, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under the Federal Employees' Compensation Act<sup>2</sup> has the burden of establishing that 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 disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> 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.<sup>4</sup>

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

In order to determine whether an employee actually sustained an injury in the performance of her duty, the Office begins with an analysis of whether fact of injury has been established.

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<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(e)(e).

Generally, fact of injury consists of two components, which must be considered, in conjunction with one another.<sup>7</sup>

The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred. 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 his subsequent course of action. 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. 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 cast doubt on an employee's statements in determining whether she has established a *prima facie* case. The employee has the burden of establishing the occurrence of the alleged injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantive evidence.<sup>8</sup> An employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>9</sup> However, 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.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

In the present case, the Office found that the record contained conflicting and inconsistent evidence regarding whether the claimed event occurred at the time, place and in the manner alleged. Specifically, the Office determined that, although appellant stated on his Form CA-1 that he injured himself when he was walking and felt pain, he later stated that he twisted his back while he was crossing a ditch on his route. The Office further stated that he had not identified any external force or mechanism of injury caused by his employment. The Board, however, finds that appellant presented sufficient evidence to establish that he injured his lower back and left hip at the time, place and in the manner alleged.<sup>11</sup>

Appellant submitted an October 5, 2001 Form CA-1 on which he stated that, on October 3, 2001, he experienced pain in his lower back and left hip while walking. Although no one witnessed the accident, appellant sought medical attention two days after the accident from Dr. Chamma, who indicated in his October 5, 2001 report that appellant stated that he was walking on October 3, 2001 when he "encountered" a pain in his back, radiating down into his toes, although appellant was unsure about the mechanism of injury. Dr. Chamma stated in an October 17, 2001 Form CA-17 duty status report that "Carrier was walking and felt a pain in his

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<sup>7</sup> *Caroline Thomas*, 51 ECAB 451 (2000).

<sup>8</sup> *John J. Carlone*, *supra* note 5.

<sup>9</sup> *Louise F. Garrett*, 47 ECAB 639, 643-44 (1996).

<sup>10</sup> *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

<sup>11</sup> *Id.*

back that radiated down his left leg.” One week later, on October 17, 2001 Dr. Chamma indicated in another Form CA-17 duty status report that appellant was injured while “walking on route” and experienced “lower back pain and in left leg.” Finally, Dr. Cartwright stated in his October 9, 2001 report that he had been treating appellant for left-sided back, buttock and leg pain since October 3, 2001 when he was injured while performing his job as a letter carrier, when he walked into a ditch, straining his back.

The Board finds that the totality of this evidence, which includes contemporaneous medical evidence from two physicians who examined and treated appellant within one month of his alleged employment accident, beginning with Dr. Chamma’s October 5, 2001 report, is not inconsistent with appellant’s subsequent, August 6, 2002 statement that he injured his lower back and left hip when he stepped into a ditch. The credibility of this statement is bolstered by Dr. Chamma’s December 3, 2001 report indicating that appellant felt pain in his back on October 3, 2001 when he stepped into a ditch. Further, the record contains no contemporaneous factual evidence indicating that the claimed incident did not occur as alleged.<sup>12</sup> Under the circumstances of this case, therefore, the Board finds that appellant’s allegations have not been refuted by strong or persuasive evidence. The Board finds that the evidence of record is sufficient to establish that the incident in which appellant injured his lower back and left hip on October 3, 2001 occurred at the time, place and in the manner alleged.

The Board finds, however, that appellant failed to submit rationalized medical opinion evidence to sufficiently describe or explain the medical process by which the October 3, 2001 work accident would have been competent to cause the claimed injury. In this regard, the Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>13</sup>

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that his condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.<sup>14</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence. Appellant submitted reports from Dr. Chamma, who stated that appellant had degenerative changes in the lumbosacral spine and mild degenerative arthritis involving the left hip as demonstrated by x-ray in his October 5, 2001 report. He diagnosed lumbar radiculopathy, lumbar strain, and hip/pelvic pain. Dr. Chamma indicated that appellant “encountered” a pain in his back, radiating down into his toes while walking on October 3, 2001, but also noted that appellant stated that he was unsure about the mechanism of injury, and that the pain began gradually. In his October 17, 2001 Form CA-17 duty status report, Dr. Chamma indicated that appellant had a fractured great left toe but did not relate this diagnosis to the August 1, 2003 work injury. The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician’s knowledge of the facts of the case, the medical history provided, the

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<sup>12</sup> See *Thelma Rogers*, 42 ECAB 866 (1991).

<sup>13</sup> See *Joe T. Williams*, 44 ECAB 518, 521 (1993).

<sup>14</sup> *Id.*

care of analysis manifested and the medical rationale expressed in support of stated conclusions.<sup>15</sup> Although Dr. Chamma did present a diagnosis of appellant's condition, he did not indicate whether this condition was causally related to the October 3, 2001 employment injury. There is no indication in the record, therefore, that the diagnosed conditions were work related. Dr. Chamma failed to provide a rationalized, probative medical opinion relating appellant's current condition to any factors of his employment. Furthermore, the December 3, 2001 form report from Dr. Chamma which supported causal relationship with a checkmark is insufficient to establish the claim, as the Board has held that, without further explanation or rationale, a checked box is not sufficient to establish causation.<sup>16</sup> Appellant also submitted Dr. Cartwright's October 29, 2001 report, which stated that appellant had been treated for left-sided back, buttock and leg pain, which he had been experienced since October 3, 2001 when he was injured while performing his job as a letter carrier. Dr. Cartwright stated findings on examination but did not provide a rationalized medical opinion that appellant had disabling lower back pain causally related to the October 3, 2001 work accident.

The Office advised appellant of the evidence required to establish his claim; however, appellant failed to submit such evidence. Appellant, therefore, did not provide a medical opinion to sufficiently describe or explain the medical process through which the October 3, 2001 work accident would have caused the claimed injury. Accordingly, as appellant has failed to submit any probative medical evidence establishing that he sustained a lower back injury in the performance of duty, the Office properly denied appellant's claim for compensation.

### **LEGAL PRECEDENT -- ISSUE 2**

Under 20 C.F.R. § 10.606(b), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.<sup>17</sup> Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.<sup>18</sup>

### **ANALYSIS -- ISSUE 2**

In the present case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; he has not advanced a relevant legal argument not previously considered by the Office; and he has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted is not pertinent to the issue on appeal. Appellant submitted copies of his October 5, 2001 Form CA-1 and his response to the Office's January 25, 2002 developmental letter. These documents do not contain medical evidence addressing the relevant issue of causal relationship and were previously reviewed by the

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<sup>15</sup> See *Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>16</sup> *Debra S. King*, 44 ECAB 203 (1992); *Salvatore Dante Roscello*, 31 ECAB 247 (1979).

<sup>17</sup> 20 C.F.R. § 10.606(b)(1); see generally 5 U.S.C. § 8128(a).

<sup>18</sup> *Howard A. Williams*, 45 ECAB 853 (1994).

Office in prior decisions. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.<sup>19</sup> Appellant's reconsideration request failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

**CONCLUSION**

The Board finds that appellant has failed to establish that he sustained an injury to his back in the performance of duty on October 3, 2001. The Office properly refused to reopen appellant's case for reconsideration on the merits of his claim under 5 U.S.C. § 8128(a).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 21, 2004 and August 15, 2003 decisions of the Office of Workers' Compensation Programs be affirmed as modified.

Issued: January 5, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>19</sup> See *David J. McDonald*, 50 ECAB 185 (1998).