

FACTUAL HISTORY

On April 2, 2010 appellant, then a 45-year-old mobilization specialist, filed a traumatic injury claim (Form CA-1) asserting that he sustained a back injury on Thursday, March 25, 2010 while lifting a box. He stated that he remained at work on March 25, 2010 and went to the doctor on Friday, March 26, 2010. Appellant did not return to work.

Dr. Richard T. Brittingham, an attending Board-certified internist, treated appellant from October 28, 2008 through February 4, 2010 for chronic neck and back pain, cerebrovascular and cardiovascular conditions. On March 18, 2010 he treated appellant for a lip laceration sustained at work when a clothes rack fell and struck him in the face. Dr. Brittingham ordered March 19, 2010 lumbar magnetic resonance imaging (MRI) scan and x-rays, which showed narrowing of the L4-5 disc and an old Schmorl's node at the L5 endplate, unchanged from a February 2005 study.

In a March 25, 2010 report, Dr. Brittingham related appellant's complaints of chronic neck and back pain with a history of spinal stenosis. He diagnosed an L4-5 disc bulge, neck pain and right-sided radiculopathy. Dr. Brittingham ordered an April 5, 2010 MRI scan showing an L5-S1 annular tear and C5-6 and C6-7 disc protrusions. On April 6, 2010 he noted that appellant complained of increased pain after "doing a lot of furniture moving" at work in late March 2010. In an April 13, 2010 report, Dr. Brittingham restricted appellant from moving furniture due to a March 25, 2010 occupational injury causing neck and low back pain. He again noted a March 25, 2010 date of injury in a May 5, 2010 form report, with a remote history of a back injury in a motor vehicle accident. Dr. Brittingham checked a box "yes" indicating his support for causal relationship, noting that "lifting and moving furniture will aggravate [appellant's] pain."

On June 7, 2010 OWCP advised appellant of the additional evidence needed to establish his claim, including a detailed description of the March 25, 2010 incident and medical evidence supporting a causal relationship between that incident and the claimed back injury. In response, appellant submitted a claim for wage-loss compensation from June 20 to July 3, 2010.

By decision dated July 15, 2010, OWCP denied the claim on the grounds that fact of injury was not established. It found that appellant did not submit factual evidence to support that the March 25, 2010 lifting incident occurred as alleged. OWCP noted that his physicians did not mention a March 25, 2010 back injury.

In a July 30, 2010 letter, appellant requested a telephonic oral hearing, held November 1, 2010. At the hearing, counsel stated that the correct date of injury was March 24, 2010 and that Dr. Brittingham's references to a March 25, 2010 incident were "record errors." Following the hearing, counsel submitted a November 22, 2010 letter asserting that appellant was injured on March 25, 2010.

Appellant submitted a July 22, 2010 statement noting a history of back injuries while in the military, prior to his work at the employing establishment. On March 18, 2010 he sustained a lip and upper back injury at work and sought medical attention. On March 24, 2010 appellant

experienced a pulling sensation in his upper and lower back while stacking chests of drawers at work. He submitted additional evidence.²

Dr. Brittingham noted chronic neck and back pain in reports from June 2 to July 19, 2010. He mentioned March 18 and 25, 2010 workplace accidents. In August 2, 2010 form reports, Dr. Brittingham noted a March 24, 2010 workplace accident causing right-sided neck and right shoulder pain. In a December 18, 2010 letter, he noted that on March 25, 2010, appellant asserted that he injured his back lifting boxes on and off pallets. Dr. Brittingham opined that this incident may have exacerbated a possible preexisting condition.

In an August 18, 2010 report, Dr. Nils Axelsen, an attending Board-certified orthopedic surgeon, diagnosed right-sided neck and right arm pain which appellant attributed to lifting a box at work on March 24, 2010.

By decision dated January 13, 2011, OWCP's hearing representative affirmed the July 15, 2010 decision, finding that the evidence submitted did not establish a March 24 or 25, 2010 lifting incident as factual. The hearing representative found that there was conflicting evidence as to the date, time and cause of the claimed incident. OWCP's hearing representative further found that there was insufficient rationalized medical evidence supporting a causal relationship between a March 24 or 25, 2010 lifting incident and the claimed back injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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.⁴ 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.⁵

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁶

² A February 8, 2005 lumbar MRI scan showed disc desiccation at L4-5 and L5-S1 with mild foraminal and spinal stenosis. Appellant submitted reports from August 26, 2005 to September 13, 2010 regarding cerebrovascular, cardiovascular and right upper extremity conditions. These documents do not address a back injury. Appellant continued to file claims for total disability compensation through July 3, 2010.

³ 5 U.S.C. §§ 8101-8193.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Gary J. Watling*, 52 ECAB 278 (2001).

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.⁷ An employee has not met his or her burden of proof 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.⁸

ANALYSIS

On April 2, 2010 appellant claimed that he sustained a back injury while lifting a box at work on March 25, 2010. OWCP denied the claim by July 15, 2010 and January 13, 2011 decisions on the grounds that the evidence was insufficient to establish that the claimed incident occurred at the time, place and in the manner alleged.

Neither appellant nor counsel provided a consistent history of injury. At the November 1, 2010 hearing, counsel contended that appellant injured his back on March 24, 2010 and that Dr. Brittingham, an attending Board-certified internist, mistakenly noted March 25, 2010 as the date of injury. Following the hearing, appellant submitted a July 22, 2010 statement concurring that he was injured on March 24, 2010, although he stated on his claim form that he was injured on March 25, 2010. Counsel then asserted in a November 22, 2010 letter that appellant was injured on March 25, 2010. Thus, appellant and counsel both used March 24, 2010 and March 25, 2010 as the date of injury, creating substantial confusion.

The medical evidence also contains divergent accounts of the date, mechanism and type of injury. Appellant complained of back pain after sustaining a March 18, 2010 facial injury at work, prompting Dr. Brittingham to order a lumbar MRI scan because appellant had preexisting spinal stenosis. Dr. Brittingham mentioned on April 6, 2010 that appellant had back pain after moving furniture at work in late March 2010, but not specifically on March 25, 2010. Also, he did not explain if the effects of the March 18, 2010 incident had ceased. Dr. Brittingham first mentioned a March 25, 2010 incident on April 13, 2010, stating that appellant sustained an injury while moving furniture. On May 25, 2010 he again mentioned moving furniture on March 25, 2010, but that appellant also had a back injury on an unspecified date due to a motor vehicle accident. In reports dated from June 2 to December 18, 2010, Dr. Brittingham referred both to March 24 and March 25, 2010 injuries. Dr. Axelsen, an attending Board-certified orthopedic surgeon, noted on August 18, 2010 that appellant believed he injured his right arm on March 24, 2010 by lifting a box at work.

The Board finds that the evidence does not provide a consistent history of when the claimed incident occurred. There is conflicting evidence regarding whether it happened on March 24 or 25, 2010 or whether appellant injured his back, his right arm, or both. These are fundamental inconsistencies that cast serious doubt on the validity of the claim.⁹ Therefore,

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁸ *S.P.*, 59 ECAB 184 (2007); *V.F.*, 58 ECAB 321 (2007).

⁹ *S.P.*, *supra* note 8.

appellant has not met his burden of proof in establishing that the March 25, 2010 incident occurred at the time, place and in the manner alleged.¹⁰

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(a) and 20 C.F.R. §§ 10.605 through 10.607.

On appeal, counsel contends that the medical evidence and appellant's statements are sufficient to establish that appellant sustained a back injury on March 24, 2010 while lifting boxes at work. As stated, the evidence of record contains divergent accounts of events that are insufficient to support that the claimed incident occurred as alleged.

CONCLUSION

The Board finds that appellant did not establish that he sustained a back injury in the performance of duty on March 25, 2010.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 13, 2011 is affirmed.

Issued: October 18, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

¹⁰ As appellant did not establish that the employment incident occurred at the time, place and in the manner alleged, the Board need not further consider the medical evidence.