



stop work.<sup>2</sup> The employing establishment controverted the claim, pointing out that appellant did not offer any supporting evidence.

OWCP informed appellant in a September 27, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a statement describing the September 15, 2010 employment incident and a physician's report offering a reasoned opinion explaining how this incident caused her alleged injury. OWCP asked appellant to state where she was and what she was doing at the time of injury, the immediate effects of the injury and what she did thereafter, and whether she had previous similar symptoms or disability.

Appellant furnished several medical records. In a September 16, 2010 report, Dr. Angel D. Rivera, a general practitioner, related that appellant worked for the employing establishment for 13 years. She experienced employment-related left shoulder and neck symptoms on around 10:00 a.m. on September 15, 2010, but could not identify the mechanism of injury. Appellant denied having a preexisting shoulder condition, but noted a prior neck injury in January 2010. Dr. Rivera examined her and observed diminished cervical range of motion (ROM) and tenderness on palpation of the C7-T1 segment, biceps tendon and left trapezius and deltoid muscles. A cervical spine x-ray showed decreased curvature. Dr. Rivera diagnosed cervicalgia and left shoulder pain.<sup>3</sup> In a September 16, 2010 activity status form, he released appellant to modified duty.<sup>4</sup>

In a September 23, 2010 follow-up report from Dr. Rivera, appellant complained of cervical soreness and left shoulder and arm pain stemming from the September 15, 2010 injury. On examination, she exhibited pain on internal shoulder rotation and tenderness of the subacromial bursa, trapezius muscle and deltoid muscle. Dr. Rivera diagnosed cervicalgia and left shoulder pain.

A September 28, 2010 magnetic resonance imaging (MRI) scan report from Dr. Murray O. Hamilton, a Board-certified diagnostic radiologist, revealed a broad-based central disc protrusion at C5-C6 that contributed to moderate central canal stenosis and bilateral foraminal narrowing.

In a September 30, 2010 report, Dr. Rivera referred to the results of the September 28, 2010 MRI scan and observed tenderness on palpation of the trapezius muscle and biceps tendon on examination. He diagnosed cervicalgia with a C5-C6 disc protrusion and left shoulder pain.

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<sup>2</sup> Appellant accepted an offer of modified assignment from the employing establishment on October 1, 2010.

<sup>3</sup> Various medical forms from Dr. Rivera, dated September 16 and October 18, 2010, reiterated the history of injury, examination findings and diagnoses contained in this report.

<sup>4</sup> The content of this form was duplicated in subsequent versions for the period September 23 to October 14, 2010.

October 7 and 21, 2010 follow-up reports added objective findings of cervical, paracervical muscle and subacromial bursa tenderness.<sup>5</sup>

By decision dated November 3, 2010, OWCP denied appellant's claim, finding the evidence insufficient to establish that she experienced an employment incident as alleged.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,<sup>6</sup> including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.<sup>7</sup> The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.<sup>8</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 she actually experienced the employment incident at the time and place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>9</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>10</sup> 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 her subsequent course of action. An employee has not met her 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>11</sup>

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<sup>5</sup> All three reports indicated that a work-related injury occurred on September 15, 2010. The October 21, 2010 report also pointed out that a left shoulder MRI scan was negative and that appellant complained of left thumb and index finger paresthesia.

<sup>6</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>7</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>8</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>9</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>10</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>11</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

## ANALYSIS

Appellant did not sufficiently establish that she experienced a September 15, 2010 work incident while in the performance of duty because her claim lacks specificity regarding the mechanism of injury.<sup>12</sup>

In the original Form CA-1, appellant stated that the cause of injury was “unknown” although asserted that she strained her left shoulder while delivering mail on September 15, 2010. On September 27, 2010 OWCP informed her that additional factual evidence was needed to establish her traumatic injury claim and gave her 30 days to submit information clarifying the details of the purported incident. Appellant subsequently provided various medical records, namely Dr. Rivera’s September 16, 2010 report noting that she experienced employment-related left shoulder and neck symptoms around 10:00 a.m. on September 15, 2010. She also reiterated on appeal that she sustained an injury on September 15, 2010 while delivering mail.

Although appellant identified the time and place of injury, her account of the manner in which she hurt her left shoulder and neck is vague and incomplete.<sup>13</sup> OWCP requested that appellant submit a factual statement detailing how the claimed injury occurred but she did not respond. As she did not submit a responsive statement providing details as to how she sustained her alleged injury on September 15, 2010, the Board finds that appellant failed to establish a *prima facie* claim.<sup>14</sup>

On appeal, appellant asserts that she was injured on September 15, 2010 while delivering mail and that, the following day, her supervisor and postmaster directed her to get medical treatment. However, as explained, appellant did not provide clarifying factual evidence describing the specific work factors and circumstances on September 15, 2010 to which she attributes her claimed injury.

The Board notes that appellant submitted new evidence after issuance of the November 3, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>15</sup> However, appellant may submit new evidence or argument as part of a formal 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.

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<sup>12</sup> *M.F.*, Docket No. 10-1514 (issued March 11, 2011); *Bonnie A. Contreras*, 57 ECAB 364, 367 (2006).

<sup>13</sup> *See Contreras*, *supra* note 12.

<sup>14</sup> *See O.W.*, Docket No. 09-2110 (issued April 22, 2010). As appellant did not meet her burden to establish the occurrence of an employment incident, it is not necessary to consider the medical evidence with regards to causal relationship. *D.F.*, Docket No. 10-1774 (issued April 18, 2011).

<sup>15</sup> 20 C.F.R. § 501.2(c).

**CONCLUSION**

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on September 15, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 3, 2010 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: September 19, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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