

FACTUAL HISTORY

On June 2, 2010 appellant, then a 48-year-old city carrier, filed a Form CA-2 alleging that she sustained an occupational disease. She became aware of a condition and realized its relationship to her federal employment on April 22, 2010.² Appellant retired in October 2010.

In a May 5, 2010 work status note, Dr. Benjamin Behroozan, a family practitioner, diagnosed lumbar sprain/strain and proscribed lifting, pulling, pushing and carrying materials weighing more than 25 pounds for the period May 6 to 20, 2010. In a May 21, 2010 note, Dr. Richard J. Feldman, a Board-certified orthopedic surgeon, diagnosed L5-S1 degenerative disc disease and extended appellant's work restrictions through June 7, 2010.

OWCP informed appellant in a June 9, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the specific employment factors that contributed to her injury and a medical report from a physician explaining the causal relationship between these purported factors and a diagnosed condition.

Appellant maintained in an undated statement that a hip condition resulted from routine casing, loading and delivery of mail, which involved reaching, bending and carrying a satchel weighing between 35 and 70 pounds.

In an undated work status note, Dr. Behroozan pointed out that appellant sustained an injury on April 22, 2010. He proscribed lifting, pulling, pushing and carrying materials weighing more than 25 pounds from April 22 to May 5, 2010.³ In June 4 and 16, 2010 notes, Dr. Feldman diagnosed L5-S1 degenerative disc disease and advised appellant to avoid heavy lifting as well as repetitive bending and stooping for the period June 4 to July 16, 2010.⁴

By decision dated July 16, 2010, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted work factors caused or contributed to the alleged injury.

Following issuance of the July 16, 2010 decision, OWCP received additional medical evidence. In April 24 and July 12, 2010 emergency department records, Dr. Edmond C. Noll, a Board-certified emergency physician and family practitioner, related that appellant injured her left hip due to twisting. On physical examination, he observed left hip joint pain. Dr. Noll diagnosed left hip muscle strain. In a July 19, 2010 note, Dr. Feldman stated that appellant was on permanent limited duty on account of a lumbar condition.

Appellant requested a telephonic hearing, which was held on November 3, 2010. She testified that she sustained a left hip and lumbar condition sometime in 2006 when she tripped over a mailbag and fell down at work. Appellant did not file a claim then or seek medical

² Appellant later filed a traumatic injury claim for headaches related to an April 5, 2010 incident. OWCP File No. xxxxxx021. This claim is not presently before the Board.

³ Dr. Behroozan's diagnosis was illegible.

⁴ Appellant also provided patient home care instructions for strained hip muscle dated April 24, 2010.

treatment until April 22, 2010. She was symptomatic for five years but did not stop work until April 17, 2010.⁵ In addition, while appellant was on vacation on April 22, 2010, her left side “got stuck” after she tried to open the rear door of her vehicle.

On January 20, 2011 OWCP’s hearing representative affirmed the July 16, 2010 decision on the modified grounds that appellant did not sufficiently demonstrate that she was, in fact, injured in the manner alleged.

Appellant requested reconsideration on January 28, 2011, clarifying that she fell down at work on January 24, 2006. She provided March 2, 2011 treatment records indicating that she was seen by a nurse practitioner for back spasms.

On April 25, 2011 OWCP denied modification of the January 20, 2011 decision. It found that the evidence was not sufficient to establish that the employment factors occurred as alleged and the medical evidence was insufficient to show a diagnosed condition caused by employment events.⁶

Appellant requested reconsideration on April 25, 2011 and submitted new evidence. In June 4 and 16, 2010 reports, Dr. Feldman noted complaints of left spine, buttock and leg symptoms. On examination, he observed a positive straight leg raise test. A magnetic resonance imaging (MRI) scan exhibited L4-5 and L5-S1 degenerative disc disease. Dr. Feldman diagnosed degeneration of lumbar/lumbosacral intervertebral disc and displacement of lumbar intervertebral disc without myelopathy. He remarked that appellant “says this is [a] work injury” and “says she [was] injured at work.”⁷

On July 28, 2011 OWCP denied modification of the April 25, 2011 decision. It found that appellant had not submitted evidence supporting how she sustained her injury and had not submitted sufficient medical evidence supporting a diagnosis caused by her work.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

⁵ The hearing transcript indicated that appellant attributed this lost time to a headache resulting from an April 5, 2010 incident, which is the basis of her traumatic injury claim. As noted, this claim is not presently before the Board. *See supra* note 2.

⁶ OWCP indicated that, if appellant attributed her injury only to the January 24, 2006 event, there was no evidence establishing that the claim was timely filed. *See* 5 U.S.C. § 8122.

⁷ Portions of these reports were illegible.

the employment injury.⁸ 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.⁹

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.¹⁰ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹¹

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.¹² 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.¹³

ANALYSIS

The Board finds that appellant did not sufficiently establish that she sustained a left hip and lumbar condition in the manner alleged because inconsistencies in the case record cast serious doubt upon the validity of her factual claim.

As noted, an employee's factual statement regarding how an occupational disease occurred must be consistent with the surrounding facts and circumstances and her subsequent course of action. Late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty and failure to obtain medical treatment may, if otherwise unexplained, may refute this statement. Here, appellant specified that she injured her left hip and lower back on January 24, 2006 when she tripped over a mailbag and fell down at work.¹⁴

⁸ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹⁰ *S.P.*, 59 ECAB 184, 188 (2007).

¹¹ *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

¹² *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹³ *Betty J. Smith*, 54 ECAB 174 (2002).

¹⁴ There is no indication that appellant previously filed a traumatic injury claim regarding the January 24, 2006 incident. This decision only addresses whether she has established an occupational disease claim. See 20 C.F.R. § 10.5(q), (ee) (sets forth OWCP's definitions of occupational disease and traumatic injury).

Thereafter, she was symptomatic for five years as a result of routine casing, loading and delivery of mail, which entailed reaching, bending and carrying a satchel weighing between 35 and 70 pounds. This is inconsistent with appellant's original assertion in the Form CA-2 that she only became aware of her condition and its relationship to her federal employment on April 22, 2010. Furthermore, the case record shows that she did not seek medical treatment until April 22, 2010¹⁵ and did not file a claim until June 2, 2010, more than five years following the onset of symptoms. Appellant testified at the telephonic hearing that she continued to work until April 17, 2010. She did not address the incongruities presented by these facts, circumstances and her own subsequent course of action, this casts serious doubt upon the validity of the claim. Appellant has not presented a clear and consistent factual account of how and when her injury occurred. Since she did not establish the factual component of fact of injury, it is not necessary for the Board to consider the medical evidence with respect to causal relationship.¹⁶

The Board points out that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁷ 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.

CONCLUSION

The Board finds that appellant did not establish that she sustained an occupational disease in the performance of duty.

¹⁵ The Board notes appellant's account that she was off duty and vacationing on April 22, 2010 when she experienced symptoms.

¹⁶ *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹⁷ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the July 28 and April 25, 2011 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 25, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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