



In a November 1, 2010 report, Dr. Sumner R. Cullom, a general practitioner, related that appellant was “stumbling up a hill” during her delivery route on October 2, 2010 when she experienced severe back pain radiating to the bilateral hips and left lower extremity. On examination, he observed lumbar muscle spasms, limited range of motion (ROM) and a positive left straight leg raise test. A previous computerized tomography (CT) scan exhibited degenerative joint and disc disease as well as mild L3-4 and prominent L4-5 disc bulges.<sup>2</sup> In a November 11, 2010 attending physician’s report, Dr. Cullom diagnosed lumbar strain. He checked the “yes” box in response to a form question asking whether the condition was causally related to federal employment activity.<sup>3</sup>

The employing establishment controverted the claim on December 28, 2010, asserting that appellant had called in on October 4, 2010 and attempted to use sick leave because she was “not feeling well.” When appellant was informed by her supervisor that she did not have any leave, she stated that she sustained a calf muscle injury on October 2, 2010 when she stumbled on some grass during her postal route. She later added that she injured her back. The employing establishment further contended that appellant was able to attend church, go out to lunch, run errands and conduct other activities of daily living.

OWCP informed appellant in a November 18, 2010 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a factual statement detailing the October 2, 2010 incident and a medical report from a physician explaining how the purported incident caused or contributed to a diagnosed condition.

Appellant specified in a January 27, 2011 statement that she parked her postal vehicle alongside an uphill curb on October 2, 2010. As she stepped out of the vehicle, she stumbled. Upon regaining her footing, appellant experienced sudden pain to her left leg but continued to make her remaining deliveries. Subsequent medical evaluations revealed a back condition. While appellant received treatment for hip soreness two months before the October 2, 2010 injury, she denied having any preexisting leg injury.

In a January 27, 2011 report, Dr. Cullom noted that appellant “injured her back at work on October 2, 2010, while she was carrying a mailbag and stumbled.” Prior physical examination and radiological findings included lumbar spasms, paravertebral tenderness and disc bulges. Dr. Cullom concluded, “It is my professional opinion that [appellant]’s pain and abnormal findings on her CT scan are a result from her injury while at work on October 2, 2010.”

By decision dated February 24, 2011, OWCP denied appellant’s claim, finding the evidence insufficient to establish that an employment incident occurred on October 2, 2010 as alleged.

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<sup>2</sup> The case record contains an October 28, 2010 report from Dr. James P. Dunne, a radiologist, which provided these findings.

<sup>3</sup> Appellant also provided Dr. Cullom’s October 4, 2010 and February 22, 2011 notes, most of which were illegible and work status certificates from November 1, 2010 to January 19, 2011 advising that she was unable to resume her employment until she received a neurological consultation.

Appellant requested a telephonic hearing, which was held July 19, 2011. She contested the employing establishment's December 28, 2010 letter of controversion.

In an August 9, 2011 report, Dr. Cullom reiterated that appellant's lumbar pain, spasms, disc bulges and paravertebral tenderness resulted from "stumbling up a hill while delivering mail" on October 2, 2011. He noted that she was previously diagnosed with bilateral degenerative hip joint disease on August 27, 2011, but opined that this condition "would not result in the symptoms that occurred after [her] accident at work."

On September 8, 2011 OWCP's hearing representative affirmed the February 24, 2011 decision.

### **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>4</sup> including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.<sup>5</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>6</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, 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>7</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>8</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>9</sup>

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<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>5</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>6</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>7</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>8</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>9</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

### ANALYSIS

The Board finds that appellant sufficiently established that she stepped out of her postal vehicle and stumbled on October 2, 2010. As noted above, an employee's statement alleging that an incident 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. The case record shows that appellant received medical treatment and filed her claim on October 4 and 6, 2010, respectively. She stopped work on October 2, 2010 and was advised by her attending physician, Dr. Cullom, to remain off duty until she underwent a neurological consultation. While the employing establishment controverted the claim on several grounds, it did not corroborate its assertions with strong or persuasive evidence. In view of the totality of the case record, the Board finds that appellant established that an employment incident occurred on October 2, 2010 as alleged.

The Board finds that the medical evidence did not establish that the accepted October 2, 2010 employment incident caused or contributed to a back or left lower extremity condition.<sup>11</sup> In a November 1, 2010 report, Dr. Cullom related that appellant was "stumbling up a hill" during her delivery route on October 2, 2010 when she had back and left leg symptoms. In a November 11, 2010 attending physician's report, he diagnosed lumbar strain and checked the "yes" box indicating that the condition was due to the October 2, 2010 work event. Dr. Cullom elaborated in January 27 and August 9, 2011 reports that appellant's condition was "a result from her injury while at work on October 2, 2010" and ruled out that her preexisting bilateral degenerative hip joint disease as a contributing factor. His opinion, however, failed to establish causal relationship because he did not pathophysiologically explain how stepping out of a postal vehicle and stumbling on October 2, 2010 caused or contributed to appellant's injury.<sup>12</sup> Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.<sup>13</sup> In the absence of rationalized medical opinion evidence, appellant failed to meet her burden of proof.

Appellant contends on appeal that the September 8, 2011 decision did not properly consider the medical evidence. The Board has already addressed the deficiencies of Dr. Cullom's reports.

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<sup>10</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>11</sup> The Board notes that appellant initially filed for a left leg only. However, the case record indicates that she amplified and expanded her claim to include allegations of back symptoms. See *Wilfred M. Hamilton*, 41 ECAB 524 (1990).

<sup>12</sup> *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

<sup>13</sup> *William C. Thomas*, 45 ECAB 591 (1994).

The Board notes that appellant submitted new evidence after issuance of the September 8, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.<sup>14</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.

**CONCLUSION**

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on October 2, 2010.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 8, 2011 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: August 3, 2012  
Washington, DC

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

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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<sup>14</sup> 20 C.F.R. § 501.2(c).