

She stated that she raised a cover on a flat sorting machine that came down and struck her on the top left side of her head. Appellant described the injury as a herniated cervical disc. On the reverse of the claim form, the employing establishment stated that appellant did not report the injury until July 20, 2010, 25 days after the alleged incident.

In a form report dated July 1, 2010, a nurse practitioner noted that appellant was treated for neck pain “since last Saturday.” The record contains prescription notes dated July 1, 2010 from Dr. John Saunders, a family practitioner, for pain medication. In a note dated July 23, 2010, an OWCP nurse stated that she had spoken to someone at the treating physician’s office and they would not release medical records as appellant “did not report this as OWCP” at her initial visit.

In a letter dated August 2, 2010, OWCP noted the requirements for establishing a claim for compensation and requested additional medical evidence.² In a duty status report (Form CA-17) dated July 27, 2010, Dr. Saunders diagnosed a herniated disc at C5-6.³ He noted that appellant had struck her head on a flat sorting machine.

By decision dated October 7, 2010, OWCP denied appellant’s compensation claim. It found the medical evidence was insufficient to establish causal relation.

Appellant requested a telephonic hearing, which was held on February 9, 2011. In a report dated July 31, 2010, Dr. Brett Gunter, a neurosurgeon, stated that appellant underwent cervical discectomy surgery. In a report dated February 23, 2011, he opined that appellant’s hospitalization and surgery were the direct result of her injury on the job. Dr. Gunter stated that the conditions related to the injury were her herniated cervical disc, a spinal cord injury, nerve root damage, muscle weakness, numbness and compressive cervical myelopathy. He stated that to a reasonable degree of medical certainty the herniated cervical disc and compressive cervical myelopathy did not exist prior to the injury. Appellant also submitted a July 30, 2010 report with a medical history that was prepared by a physician’s assistant.

By decision dated April 4, 2011, the hearing representative affirmed the October 7, 2010 decision. He found the medical evidence was insufficient to establish causal relation.

On May 10, 2011 appellant requested reconsideration of her claim. In a report dated May 3, 2011, Dr. Gunter provided results on examination. He stated that a metal hood had struck appellant in the back of the head on June 25, 2010. Dr. Gunter stated that he disagreed with the conclusions of the hearing representative and had already stated that the injury produced appellant’s herniated disc. He stated that biomechanically, it made sense that the employment injury led to a herniated disc, cord compression and surgery.

Appellant also resubmitted a July 30, 2010 report with a signature from Dr. Gunter. The history provided noted that appellant had received treatment on July 1, 2010, stating that

² OWCP received evidence on August 2, 2010 but such evidence was not apparently reviewed prior to issuing the August 2, 2010 development letter.

³ The record contains a July 12, 2010 magnetic resonance imaging scan report finding a C5-6 disc herniation.

appellant “presented to the office for evaluation and initially claimed that she did not identify whether this was a work-related injury when questioned. She said that she in fact did get injured at work therefore she started the worker’s comp. process.”

By decision dated October 19, 2011, OWCP reviewed the case on its merits. It found that there were inconsistencies with respect to appellant’s actions following the alleged incident and, therefore, it had not been established that the employment incident occurred as alleged.

LEGAL PRECEDENT

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”⁴ The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of an in the course of employment.”⁵ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁶ In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.⁷

An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.⁸ An injury does not have to be confirmed by eyewitnesses to establish that an employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁹ It is well established that a claimant cannot establish fact of injury if there are inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place and in the manner alleged.¹⁰ 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, if otherwise unexplained, cast sufficient

⁴ 5 U.S.C. § 8102(a).

⁵ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁶ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁷ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

⁸ *William Sircovitch*, 38 ECAB 756, 761 (1987); *John G. Schaberg*, 30 ECAB 389, 393 (1979).

⁹ *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹⁰ *Gene A. McCracken*, 46 ECAB 593 (1995); *Mary Joan Coppolino*, 43 ECAB 988 (1992).

doubt on an employee's statements in determining whether a *prima facie* case has been established.¹¹

With respect to medical evidence, a claimant must submit rationalized medical opinion evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹²

ANALYSIS

The Board finds that, as to the occurrence of an employment incident on June 25, 2010, the evidence of record reveals inconsistencies with respect to appellant's claim. Appellant did not initially stop work or report an incident to the employing establishment. She received medical treatment on July 1, 2010 for neck pain, but the medical evidence of record indicated that she failed to report any employment incident. The history provided in the July 30, 2010 report from Dr. Gunter suggests that appellant was provided an opportunity to discuss a work incident, but did not report an employment incident. Appellant did not notify the employing establishment of a June 25, 2010 employment incident until July 20, 2010.

The record contains no explanation for these apparent inconsistencies with an employment incident as alleged on June 25, 2010. The evidence indicates a late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to initially provide a history of a work injury when obtaining medical treatment. As noted above, these circumstances cast doubt as to the occurrence of the alleged incident and do not satisfy the factual element of appellant's claim for compensation. It is appellant's burden of proof to establish the claim for compensation and she did not meet her burden of proof in this case. Since appellant has not established that an employment incident occurred as alleged, the Board will not address the medical evidence on the issue of casual relationship between an employment incident and a diagnosed condition.

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.

CONCLUSION

The Board finds that appellant did not establish an injury in the performance of duty on June 25, 2010.

¹¹ *Robert A. Gregory*, 40 ECAB 478, 483 (1989).

¹² *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 19, 2011 is affirmed.

Issued: August 17, 2012
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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