

when a mail hamper hit his back. He specified that Paul Juarez, a coworker, pushed a platform truck into a row of three hampers, propelling the third hamper that ultimately struck him. Appellant added that Mr. Juarez thereafter “start[ed] laughing.”

A January 26, 2010 evaluation form signed by a physician’s assistant noted that appellant’s back was hit by a mail hamper on January 25, 2010.

In a January 26, 2010 statement, Mr. Juarez recounted that he transported a truck carrying priority mail to the small parcel and bundle sorter, but did not push it into a hamper.

Appellant’s supervisor controverted the claim in a February 2, 2010 e-mail. On January 27, 2010 she and a second supervisor lined up three hampers, the last of which was approximately four feet from where appellant appeared to have stood at the small parcel and bundle sorter on January 25, 2010.² After pushing a cart into the row twice, they noticed that the third hamper only moved up to four inches and concluded that appellant did not sustain a back injury in the manner alleged.

OWCP informed appellant in a February 18, 2010 letter that additional information was needed to establish his claim. It gave him 30 days to address the employing establishment’s controversion of the January 25, 2010 employment incident and submit a medical report from a physician explaining how this work event contributed to a back injury.

Appellant provided additional medical evidence. January 26, 2010 thoracic x-rays obtained by Drs. Terril A. Efirid and Roberta Yang, Board-certified diagnostic radiologists, showed mild degenerative disc disease. An additional January 26, 2010 lumbar x-ray obtained by Dr. Yang exhibited L4-5 and L5-S1 disc bulges. None of the scans revealed a fracture.

In a February 1, 2010 report, Dr. Harwinder Singh, a Board-certified physiatrist, related that appellant was handling mail on January 25, 2010 when another employee pushed a truck into several hampers and caused one of them to hit his back. On examination, he observed loss of lumbar lordosis, L3-4 and L4-5 spinous process tenderness, restricted lumbosacral and hip range of motion (ROM) and moderate bilateral hamstring tightness. Dr. Singh diagnosed lower back pain due to employment activity.

Dr. Singh stated in a February 19, 2010 report that appellant also had a right shoulder injury and left lower extremity symptoms as a result of the January 25, 2010 employment incident. On examination, he observed limited cervicospinal ROM, bilateral levator scapulae muscle and sacroiliac joint tenderness, right shoulder impingement, lumbar paraspinal muscle spasms and moderate-to-severe bilateral hamstring tightness. Dr. Singh diagnosed right shoulder and lumbar sprain and strain with possible degenerative disc disease and left lumbar radiculitis. In a March 18, 2010 report, he diagnosed right shoulder tendinitis and opined, “There is clear

² Appellant’s supervisor indicated that this arrangement was proper in light of her investigatory findings and the written statements from appellant and Mr. Juarez.

evidence that [appellant]’s work-related injury of January 25, 2010 ... resulted from mail hampers hitting him in the back when pushed by a truck.”³

By decision dated March 23, 2010, OWCP denied appellant’s claim, finding the evidence insufficient to demonstrate that the January 25, 2010 employment incident occurred as alleged.

Appellant asserted in a March 8, 2010 statement that the employing establishment was “totally lying about the space between the hampers and where I was standing.” He detailed that the hamper “was actually touching my back” before Mr. Juarez pushed a truck into the row of hampers. Appellant submitted January 26, 2010 emergency department nursing records and physician’s report signed by Dr. Brian E. Horan, an osteopath Board-certified in emergency medicine, reiterating that a mail hamper struck his back on January 25, 2010.

On March 24, 2010 appellant filed a notice of recurrence. In an April 1, 2010 letter from OWCP, he was advised that a recurrence claim was premature because it had not yet accepted that he sustained an employment-related injury.

Appellant requested a telephonic oral hearing, which was held on August 11, 2010. He testified that he was working very close to the hampers on January 25, 2010 because of limited floor space. Appellant clarified that the platform truck weighed between 500 and 800 pounds and that his right shoulder condition arose a few weeks after the incident.

In reports for the period March 25 to May 20, 2010, Dr. Singh noted that appellant experienced right shoulder and lower back pain, the latter of which radiated to the left lower extremity, following the January 25, 2010 work event. On examination, he observed mild right shoulder impingement, lumbar paraspinal muscle spasms, left sacroiliac joint tenderness, a positive straight leg test and hyporeflexia. Dr. Singh diagnosed right shoulder impingement and aggravated degenerative disc disease with intermittent left lumbar radiculitis.⁴

On October 26, 2010 OWCP affirmed the March 23, 2010 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his claim by the weight of reliable, probative and substantial evidence,⁵ including that he is an “employee” within the meaning of FECA and that he filed his claim within the applicable time limitation.⁶ The employee must also establish that he sustained an

³ The case record contains Dr. Singh’s work status notes for the period February 1 to March 10, 2010 advising that appellant be placed off duty. In addition, his March 18, 2010 report, as well as a March 10, 2010 report, incorporated the history of injury and clinical findings found in the earlier February 1 and 19, 2010 reports.

⁴ A subsequent June 22, 2010 report from Dr. Singh indicated that appellant sustained left shoulder impingement. In view of his other reports, this appears to be a typographical error. Otherwise, the June 22, 2010 report essentially duplicated the history of injury, clinical findings and diagnoses of the reports from March 25 to May 20, 2010.

⁵ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁶ *R.C.*, 59 ECAB 427 (2008).

injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.⁷

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 he 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.⁸

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.⁹ 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 his subsequent course of action. An employee has not met his 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.¹⁰

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.¹¹

ANALYSIS

The Board finds that appellant established that a mail hamper hit his back on January 25, 2010 while he was separating parcels. The 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. Appellant promptly filed a traumatic injury claim and received medical treatment on the date of injury. His statements and the medical histories obtained by Drs. Singh and Horan consistently indicated that a mail hamper struck his back at

⁷ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ *T.H.*, 59 ECAB 388 (2008).

⁹ *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

¹⁰ *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *I.J.*, 59 ECAB 408 (2008).

work on January 25, 2010.¹² Although appellant's supervisor contended that a reenactment of the event on January 27, 2010 demonstrated otherwise, this activity was demonstrated at most that the alleged incident was unlikely not impossible. Appellant disputed the employing establishment conclusions.¹³ In view of the totality of the evidence, the Board finds that he established that the January 25, 2010 employment incident occurred as alleged.

The Board finds that appellant did not provide sufficient medical evidence to show that his right shoulder, back and left lower extremity condition was due to the accepted employment incident.¹⁴ In reports from February 1 to June 22, 2010, Dr. Singh diagnosed right shoulder tendinitis, impingement, lumbar sprain and strain, degenerative disc disease and left lumbar radiculitis, *inter alia*. He also attributed appellant's injuries to the January 25, 2010 work event. In particular, Dr. Singh remarked in a March 18, 2010 report that "[t]here is clear evidence that [appellant]'s work-related injury of January 25, 2010 ... resulted from mail hampers hitting him in the back when pushed by a truck." However, he did not further elaborate on this "clear evidence" or explain how the January 25, 2010 employment incident pathophysiologically caused or contributed to appellant's condition.¹⁵

Dr. Horan similarly concluded in a January 26, 2010 physician's report that a mail hamper struck appellant's back on January 25, 2010. Nevertheless, his opinion offered limited probative value on the issue of causal relationship because he did not provide fortifying medical rationale.¹⁶ January 26, 2010 radiological records from Drs. Efird and Yang were of limited weight because they did not address whether appellant's federal employment either caused or aggravated his injuries or was unrelated.¹⁷ Finally, the medical documents signed by a physician assistant and nurse cannot constitute competent medical evidence because neither was a "physician" as defined under FECA.¹⁸ In the absence of rationalized medical opinion evidence, appellant failed to meet his burden.

The Board notes that appellant submitted new evidence after issuance of the October 26, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁹

¹² See *Caroline Thomas*, 51 ECAB 451 (1999) (a consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can be evidence of the occurrence of the incident).

¹³ Compare with *Delphyne L. Glover*, 51 ECAB 146 (1999) (appellant did not rebut the employment establishment's statement that she unsuccessfully reenacted the alleged employment incident and admitted afterward that the event could not have occurred).

¹⁴ The Board notes that appellant initially filed for a back condition only. However, the case record indicates that he amplified and expanded his claim to include allegations of right shoulder and left leg injuries related to the January 25, 2010 work event. See *Wilfred M. Hamilton*, 41 ECAB 524 (1990).

¹⁵ See *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹⁶ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹⁷ *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *S.E.*, Docket No. 08-2214 (issued May 6, 2009).

¹⁸ 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238, 242 (2005). See also *Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

¹⁹ 20 C.F.R. § 501.2(c).

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 he sustained a traumatic injury in the performance of duty on January 25, 2010.

ORDER

IT IS HEREBY ORDERED THAT the October 26, 2010 decision of the Office of Workers' Compensation Programs is affirmed as modified.

Issued: January 12, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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