



Appellant's supervisor controverted the claim, noting that she was unaware of any injury until reported to her on August 6, 2009. Appellant did not stop work.

On August 5, 2009 Dr. Alia Mesh, a Board-certified neurologist, completed a note certifying that appellant had been under her care since February 3, 2009. She noted that appellant had severe neck and low back pain radiating down the left arm and leg. Appellant underwent a March 31, 2009 magnetic resonance imaging (MRI) scan of the low back that revealed left iliosacral disc herniation inflammation. Dr. Mesh recommended physical limitations, noting no more than three hours of continuous walking with lifting and pushing limited to 15 pounds.

In an August 31, 2009 letter, OWCP advised appellant that the evidence of record was not sufficient to establish her claim. It requested that she submit additional medical evidence within 30 days. In response, appellant submitted two treatment notes from Dr. Mesh dated September 23, 2009 that noted her work restrictions.

In an October 1, 2009 decision, OWCP denied appellant's claim. It found that she failed to establish that the December 12, 2008 incident occurred at the time, place and in the manner alleged. Further, the medical evidence was not sufficient to establish causal relation.

In a statement received October 1, 2009, appellant noted that her injury did not occur on December 12, 2008. Rather, she stated that the date of injury was November 26, 2008, as it occurred three days prior to her mother's birthday. Appellant submitted a November 25, 2009 request for reconsideration and submitted additional medical records.

In a September 29, 2009 report, Dr. David V. Inslicht, a Board-certified internist, noted that appellant was examined for the first time that day. Appellant reported a history of a neck injury at work on December 12, 2008 when she lifted a heavy box. Dr. Inslicht stated that an MRI scan of March 31, 2009 revealed a C4-5 herniated disc with spinal cord impingement. Appellant continued to experience neck pain with left hand numbness. Dr. Inslicht advised that she could work with restrictions and that the duration of disability was unclear.

Appellant submitted a December 2, 2008 report from Susan Cronk, a nurse, who reported a history of the onset of right leg pain and numbness three days prior. She also submitted treatment notes dated February 3 and April 28, 2009 from Dr. Mesh, who noted that appellant had complained of numbness in her hands, which might be carpal tunnel syndrome. A cervical MRI scan was recommended. Physical examination of the lumbar spine revealed tenderness.

On November 5, 2009 Dr. Apostolos P. Tambakis, a Board-certified orthopedic surgeon, obtained a history of injury on November 26, 2008 while appellant carried a heavy box at work. He noted her complaint of pain at the base of her neck and left upper extremity, which gradually increased. Appellant was examined by a neurologist in February 2009 and diagnosed with a herniated disc. In July, her position change to a letter carrier which aggravated her symptoms of neck and low back pain. Dr. Tambakis stated that appellant's work duties aggravated her cervical and low back condition and she stopped work on September 23, 2009. He diagnosed a cervical sprain, C4-5 herniated disc and low back sprain.

In a January 13, 2010 report, Dr. Mathew Lefkowitz, a specialist in pain medicine, noted that appellant was originally seen on October 19, 2009 for left-sided neck pain, low back pain and bilateral leg pain. He administered a cervical facet joint injection. On November 11, 2009 appellant reported relief from the neck pain and Dr. Lefkowitz administered an injection in the left superior trapezius musculature. On December 1 and 22, 2009 she complained primarily of low back pain, left greater than right side, radiating into the buttocks bilaterally. Dr. Lefkowitz performed a transforaminal lumbar selective epidural nerve root block and steroid injections. He noted that on January 13, 2010 appellant informed him that the pain she experienced was the result of a work-related accident on November 26, 2008 while carrying heavy boxes. Dr. Lefkowitz noted that she obtained temporary pain relief from previous diagnostic injections and recommended bilateral lumbar facet joint radio frequency ablations with physical therapy.

By decision dated February 12, 2010, OWCP denied modification of the October 1, 2009 denial of her claim. It accepted that the November 26, 2008 incident took place at work as alleged; but found that the medical evidence of record was not sufficient to establish causal relationship with her cervical or low back conditions.

On April 14, 2011 appellant, through her attorney, requested reconsideration of her claim. She submitted medical reports previously of record and additional treatment notes from Dr. Tambakis, physical therapy records and nursing reports.

In a July 20, 2011 decision, OWCP denied modification of its prior decisions. It found that the medical evidence did not sufficiently address the issue of causal relation.

### **LEGAL PRECEDENT**

An employee seeking benefits under the 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 filed within applicable time limitations; that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>2</sup> These are the essential elements of each claim regardless of whether it is premised on a traumatic injury or an occupational disease.<sup>3</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established.<sup>4</sup> The employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>5</sup> The employee must also

---

<sup>2</sup> C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Paul Foster*, 56 ECAB 208 (2004).

<sup>3</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *A.S.*, 59 ECAB 246 (2007); *Louise F. Garnett*, 47 ECAB 639 (1996).

<sup>5</sup> *V.O.*, 59 ECAB 500 (2008); *Julie B. Hawkins*, 38 ECAB 393 (1987).

submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</sup>

Causal relationship is a medical question to be resolved by probative evidence from a physician.<sup>7</sup> A rationalized medical opinion must be based on a complete and accurate medical history of the employee, an accurate factual history of the alleged injury or history of occupational exposure, must be one expressed to a reasonable degree of medical certainty and supported by an explanation of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>8</sup>

### ANALYSIS

The Board notes that appellant originally claimed traumatic injury on December 12, 2008 after lifting a large package in the performance of duty. Appellant subsequently clarified in statements to the record that the employment incident occurred on November 26, 2008. OWCP accepted the lifting incident of November 26, 2008 but denied the claim as the medical evidence was insufficient to establish causal relation.

The Board finds that appellant did not submit a sufficient medical opinion to address the causal relationship between the accepted lifting incident at work and her claimed back condition. Appellant originally claimed an iliosacral disc herniation. The August 5, 2009 report of Dr. Mesh, an attending neurologist, advised that she had treated appellant since February 3, 2009. She noted appellant's complaint of neck and low back pain radiating into the extremities and commented that diagnostic testing showed inflammation of a left iliosacral disc. Dr. Mesh did not address, however, the November 26, 2008 employment incident or the issue of casual relationship. She provided physical limitations.

The September 29, 2009 report of Dr. Inslicht, an attending internist, listed a history of injury on December 12, 2008 as originally claimed. He noted that an MRI scan of March 31, 2009 revealed a C4-5 cervical disc. Dr. Inslicht noted work restrictions and that appellant's duration of disability was unclear. He did not record an accurate history of the November 26, 2008 incident accepted by OWCP or address how the cervical disc found on testing in March 2009 would relate back to appellant's work activities of that date.<sup>9</sup> It is well-established that medical opinions based on an incomplete history or which are speculative or equivocal are of diminished probative value.<sup>10</sup>

---

<sup>6</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *Barbara R. Middleton*, 56 ECAB 634 (2005).

<sup>7</sup> *See M.D.*, 59 ECAB 211 (2007); *Donald W. Wenzel*, 56 ECAB 390 (2005).

<sup>8</sup> *See Larry D. Dunkin*, 56 ECAB 220 (2004); *Thomas L. Hogan*, 47 ECAB 323 (1996).

<sup>9</sup> The Board has held that a delay in obtaining diagnostic testing may diminish the probative value of a medical opinion. *See Linda L. Mendenhall*, 41 ECAB 532 (1990).

<sup>10</sup> *See Cecelia M. Corley*, 56 ECAB 662 (2005).

On November 5, 2009 Dr. Tambakis obtained an accurate history of the November 26, 2008 lifting incident. He noted appellant's complaint of pain at the base of her neck and the left upper extremity. Dr. Tambakis referred generally to the neurosurgical evaluation and the diagnosis of a herniated disc and stated that a change in appellant's work in July 2009 had aggravated her symptoms. He diagnosed a cervical sprain, C4-5 herniated disc and low back pain. The Board notes that, while Dr. Tambakis generally supported appellant's claim, he did not provide adequate medical opinion addressing causal relationship between the diagnosed conditions and the accepted employment incident of November 2008. Further, Dr. Tambakis' report addresses employment factors from July 2009 presently not implicated in this claim. This may form the basis for an occupational disease claim rather than one of traumatic injury.<sup>11</sup>

Dr. Lefkowitz provided treatment notes stating that he first saw appellant on October 19, 2009 for left sided neck and low back pain. His records reflect that he provided a series of facet joint and epidural injections to her cervical and lumbar spine. Dr. Lefkowitz recorded that appellant told him on January 13, 2010 that her pain was a result of work incident of November 26, 2008 while carrying heavy boxes. While he listed the history of injury related to him by appellant, he did not provide an independent medical opinion addressing causal relationship. Dr. Lefkowitz' treatment records do not adequately explain how the injections he administered to appellant were caused or necessitated by the traumatic incident accepted in this case. Finally, the records submitted by Ms. Cronk, a nurse, are not probative on the issue of causal relationship as a nurse is not a physician as defined under FECA.<sup>12</sup>

For these reasons, the Board finds that appellant has not submitted sufficient medical evidence to support that the November 26, 2008 incident caused or contributed to her cervical or lumbar condition. Appellant did not meet her burden of proof.

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 meet her burden of proof to establish that she sustained a back injury on November 26, 2008.

---

<sup>11</sup> See 20 C.F.R. § 10.5(ee).

<sup>12</sup> See *Paul Foster*, 56 ECAB 208 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

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