



fallen onto the street. He explained that he was cleaning up mail that had fallen onto the street when he pulled a muscle in his right hip. The next day appellant could not stand up and could hardly walk. He stopped work and returned on August 22, 2011.

In a handwritten August 16, 2011 note, Dr. Edmond Sarkissian, a Board-certified internist, stated that he examined appellant for a lower back and buttock strain. He advised appellant to rest and apply a warm compress. Dr. Sarkissian noted that appellant could return to work on August 22, 2011.

In a September 25, 2012 attending physician's report, Dr. Manuel A. Ceja, an internist, stated that he first examined appellant on September 25, 2012 for an injury to his lower back after he picked up mail that fell out of a postal vehicle. He observed tenderness in the lower back and diagnosed lumbar radiculopathy. Dr. Ceja checked "yes" that appellant's condition was caused or aggravated by the employment activity. He stated that appellant was totally disabled from September 25 to October 1, 2012.

In a September 25, 2012 duty status report, Dr. Ceja noted a date of injury of August 14, 2011. He reported clinical findings of tenderness of the lower back and diagnosed lumbar radiculopathy. Dr. Ceja authorized appellant to return to work with restrictions.

By letters dated September 27 and October 2, 2012, OWCP advised appellant that the evidence submitted was insufficient to establish his claim. It requested additional factual evidence to establish that the alleged August 14, 2011 incident occurred and additional medical evidence to establish that he sustained a back condition as a result of the alleged incident.

In October 1 and 5, 2012 reports, Dr. Ceja noted a date of injury of September 25, 2012. He related that appellant was a postal service employee who felt a sharp pain in his lower back when he picked up mail that fell out of a postal container. Dr. Ceja reported mild improvement in his lower back pain which now radiated down his right hip. Upon examination, he observed mild tenderness to palpation and decreased range of motion to rotation and lateral bending. Straight leg raise testing was negative. Dr. Ceja diagnosed lumbar sprain and strain.

In October 5 and 12, 2012 attending physician's reports, Dr. Ceja noted a date of injury of September 25, 2012 when appellant picked up a postal container that fell out of a truck. Examination revealed decreased range of motion and tenderness. Dr. Ceja diagnosed lumbar radiculopathy and reported that appellant was totally disabled until October 12, 2012. He checked "yes" that appellant's condition was caused or aggravated by an employment activity.

By letter dated October 9, 2012, OWCP stated that it created two separate cases for the same injury. It advised appellant that it deleted case number xxxxxx025 and all the documents in that case were moved to case number xxxxxx653.

In an October 9, 2012 statement, appellant explained that he did not file a CA-1 form after his August 14, 2011 injury on the job because he was not advised to do so. He stated that he did not feel any pain immediately after the incident but the next day he reported it to his supervisor when he realized that he was unable to perform any duties at the start of his shift. Appellant noted that he had not sustained any other injury between the date of injury and the date

it was first reported to his supervisor and did not have any similar disability or symptoms before the alleged August 14, 2011 injury.

In decisions dated November 7 and 16, 2012, OWCP denied appellant's traumatic injury claim finding insufficient evidence to establish that the August 14, 2011 employment incident occurred as alleged and that he sustained any diagnosed condition as a result of the alleged incident.

On December 14, 2012 appellant submitted a request for an oral hearing, which was held on March 4, 2013. He stated that on August 14, 2011 he sustained a minor injury at work that he never filed a claim for, but on September 24, 2012, he felt a sharp pain in his lower back and buttock when he pushed the postal containers into the truck. Appellant noted that he did not get any medical treatment after he returned to work in August 2011 until September 2012. He explained that when he got hurt in September 2012 he initially thought it was from the previous August 2011 injury.

In a January 2, 2013 statement, appellant stated that there was a discrepancy in the date of injury he reported to OWCP. He explained that on September 24, 2012 at approximately 6:45 a.m. he was carrying a full truck load of bulk mail containers and postal containers. Appellant was pushing the mail containers up onto the dock plate to load his truck when he felt a sharp pain in his right buttocks area. He stated that he did not pay much attention but the pain continued to intensify until he realized there was something clearly wrong. Appellant completed the truckload and notified his supervisor immediately. His supervisor told him to go home and he returned the next day to fill out paperwork. Appellant noted that he incorrectly indicated a date of injury of August 14, 2011 on his CA-1 form. He stated that he did pull a muscle in his right hip on August 14, 2011 but did not file an OWCP claim for this condition. Appellant concluded that the evidence he submitted established that he sustained an on-the-job injury on September 24, 2012.

In a November 7, 2012 report, Dr. Ceja related that on September 25, 2012 appellant felt a sharp pain in his lower back while working as a motor vehicle operator. He stated that after work he began to feel his right hip pain return and travel down to his right foot. Upon examination, Dr. Ceja observed full range of motion and mild tenderness of the right hip. He diagnosed lumbar sprain and strain and pain in the joint of the pelvic region and thigh.

By decision dated April 11, 2013, an OWCP hearing representative affirmed the November 16, 2012 denial decision finding insufficient evidence to establish that the August 14, 2011 occurred as alleged and that appellant sustained any injury as a result of the alleged work incident.<sup>2</sup>

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<sup>2</sup> The hearing representative also determined that appellant attempted to claim two separate traumatic incidents, one in August 2011 and one in September 2012, under the same claim, which was procedurally incorrect. He noted that his decision did not relate to a September 2012 incident, which had not been formally adjudicated yet.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence,<sup>4</sup> including that he or she is an “employee” within the meaning of FECA<sup>5</sup> and that he or she filed his or her claim within the applicable time limitation.<sup>6</sup> The employee must also establish that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>7</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.<sup>8</sup> There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident which is alleged to have occurred.<sup>9</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>10</sup>

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee’s statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>11</sup> An employee has not met his or her burden of proof 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. 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 doubt on an employee’s statement in determining whether a *prima facie* case has been established.<sup>12</sup> An employee’s

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951).

<sup>6</sup> *R.C.*, 59 ECAB 42 (2008); *Kathryn A. O’Donnell*, 7 ECAB 227, 231 (1954).

<sup>7</sup> *G.T.*, 59 ECAB 447 (2008); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

<sup>8</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>9</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>10</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

<sup>12</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

statement alleging 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>13</sup>

The employee must also submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>14</sup> To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>15</sup>

### ANALYSIS

On September 24, 2012 appellant filed a traumatic injury claim alleging that on August 14, 2011 he sustained an injury to his back and buttocks when he picked up postal containers on the street. OWCP denied his claim finding insufficient evidence to establish that the August 14, 2011 incident occurred as alleged and that he sustained any diagnosed condition as a result of the alleged incident. The Board finds that appellant failed to establish that he sustained an injury in the performance of duty on August 14, 2011.

The Board notes that appellant has the burden of proof to establish the essential elements of his claim, including that the employment incident occurred at the time, place and in the manner alleged and that the incident resulted in an injury. In this case, appellant alleged that on August 14, 2011 he picked up postal containers and experienced pain in his lower back and buttocks. The Board finds that he has not provided the sufficient detail needed to establish that the August 14, 2011 incident occurred as alleged. Appellant did not adequately describe the circumstances of his injury and failed to present evidence regarding the mechanism of injury.<sup>16</sup> He did not provide any statements from his supervisor supporting his claim even though he alleged that he notified his supervisor of the incident when he realized he was unable to complete his work duties due to pain and did not identify any possible witnesses to the incident. The only reference to an August 14, 2011 incident is in a September 25, 2012 duty status report by Dr. Ceja who noted a date of injury of August 14, 2011, but Dr. Ceja does not provide any description of the alleged event.<sup>17</sup> Moreover, appellant did not file a traumatic injury claim until September 24, 2012, more than one year after the alleged incident. The Board also notes that appellant initially referenced an August 14, 2011 incident but later alleged that the injury occurred on September 24, 2012. As previously noted, an employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>18</sup> Because appellant failed to provide evidence to establish that the

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<sup>13</sup> *D.B.*, 58 ECAB 529 (2007).

<sup>14</sup> *J.Z.*, 58 ECAB 529 (2007).

<sup>15</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>16</sup> *Paul Foster*, 56 ECAB 1943 (2004).

<sup>17</sup> The additional medical evidence of record relates to a September 24, 2012 date of injury. If appellant is seeking compensation for a work injury that occurred on September 24, 2012, he must file another traumatic injury claim (Form CA-1) for the September 24, 2012 incident.

<sup>18</sup> *Supra* note 12.

August 14, 2011 incident occurred at the time, place and in the manner alleged, the Board finds that OWCP properly denied his traumatic injury claim.

The Board further notes that in order to establish fact of injury appellant also has the burden of proof to provide rationalized medical opinion evidence establishing that he sustained a diagnosed condition as a result of the alleged incident. The only report that referred to an August 14, 2011 incident is a September 25, 2012 duty status report by Dr. Ceja, who provided clinical findings and diagnosed lumbar radiculopathy. Although Dr. Ceja noted a correct date of injury and provided a diagnosis, he did not provide any opinion on the cause of appellant's lumbar condition. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>19</sup> Thus, this duty status report is insufficient to establish appellant's case.

Appellant submitted additional reports by Drs. Ceja and Sarkissian for complaints of pain in his lower back and buttocks. In reports dated September 25 to October 12, 2012, Dr. Ceja noted a date of injury of September 25, 2012. He conducted an examination and diagnosed lumbar radiculopathy and lumbar sprain and strain. Dr. Ceja checked "yes" that appellant's condition was related to the incident described. The Board has held, however, that medical opinions based on an incomplete or inaccurate history are of limited probative value.<sup>20</sup> In his reports, Dr. Ceja did not reference an August 14, 2011 incident. Accordingly, his opinion fails to establish causal relationship.

On appeal appellant alleged that he was not trying to claim the August 2011 injury as contended and that he explained during the hearing and in a letter that the September 24, 2012 CA-1 form that he filed was for an alleged September 24, 2012 injury. He explains that he initially thought the September 24, 2012 injury was related to an August 14, 2011 injury but he later found out that they were entirely different incidents. The record reveals, however, that the CA-1 form indicates a date of injury of August 14, 2011. If appellant is now alleging a September 24, 2012 injury, he must file a separate traumatic injury claim. In this instant case, he failed to provide sufficient evidence to prove that the August 14, 2011 incident occurred as alleged and that he sustained any diagnosed condition as a result of the alleged incident. Thus, the Board finds that OWCP properly denied appellant's claim for compensation.

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 his burden of proof to establish that he sustained an injury in the performance of duty on August 14, 2011.

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<sup>19</sup> *R.E.*, Docket No. 10-679 (issued November 16, 2010); *K.W.*, 59 ECAB 271 (2007).

<sup>20</sup> *J.R.*, Docket No. 12-1099 (issued November 7, 2012); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 11, 2013 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 14, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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