



Appellant submitted an August 20, 2011 duty status report from Dr. Rathindra Banik, Board-certified in emergency medicine, who found contusion of the head and hip and returned appellant to work without restrictions. Dr. Brian D. Feingold, a Board-certified internist, noted in an August 22, 2011 attending physician's report that appellant fell at work on August 20, 2011 and sprained her neck and hip.<sup>2</sup> He noted with a checkmark "yes" that her condition was caused or aggravated by an employment activity. Dr. Feingold found appellant disabled since August 20, 2011. In an August 22, 2011 duty status report, he noted findings of neck, lower back and left leg pain. Dr. Feingold noted that appellant was disabled.

An August 30, 2011 lumbar spine magnetic resonance imaging (MRI) scan showed right paracentral protrusion at L4-5, encroaching on the right L5 nerve root, L5-S1 encroaching on the S1 nerve root with a right paracentral annular tear at L3-4. An August 30, 2011 cervical spine MRI scan revealed left paracentral protrusions at C3-4, C6-7 without compression and mild diffuse disc bulging at C5-6 and dilation of existing nerve root sheath suggesting multiple perineural cysts. In a September 26, 2011 duty status report, Dr. Michael B. Shapiro, a Board-certified orthopedist to whom appellant was referred by Dr. Feingold, noted findings of pain in the hip and advised that appellant could not return to work.

By letter dated October 14, 2011, OWCP advised appellant of the type of factual and medical evidence needed to establish her claim.

Appellant submitted August 20, 2011 emergency room records from an unidentified provider which noted that appellant reported tripping and falling. An August 20, 2011 x-ray of the right femur and a computerized tomography scan of the head, both ordered by Dr. Banik, revealed no abnormalities. In an August 22, 2011 report, Dr. Shapiro noted treating appellant for back, neck, right hip and right leg pain. Appellant reported working as a letter carrier and stated that her pain started on August 20, 2011 while walking, her right leg gave out and she stumbled and fell in the street and hit her head and the right side of her body. Dr. Shapiro noted findings of diminished range of motion of the neck, cervical and lumbar spine pain, muscle spasm of the cervical spine, positive straight leg raises on the right and intact reflexes and sensations in the upper and lower extremities. He diagnosed cervicalgia, lumbago and lumbar radiculopathy. In September 26, October 24 and 31, 2011 reports, Dr. Shapiro treated appellant for pain in the spine, back, right hip and right leg. He repeated his diagnoses and advised that appellant was not working. In duty status reports dated October 24 and 31, 2011, Dr. Shapiro diagnosed hip pain and noted that appellant could return to work on January 11, 2012 with restrictions. An August 30, 2011 MRI scan of the cervical spine revealed possible fat within the spinal cord, left paracentral protrusion at C3-4, C6-7 with mild diffuse bulging at C5-6 and possible cysts in the cervical and thoracic spine.

In a decision dated November 15, 2011, OWCP denied appellant's claim on the grounds that the evidence was not sufficient to establish that the events occurred as alleged.

On November 28, 2011 appellant requested a review of the written record. In a November 5, 2011 letter, appellant's representative noted that on August 15, 2011, while stepping out of her vehicle, appellant felt a sharp pain in her right hip and reported it to her

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<sup>2</sup> On August 20, 2011 the employing establishment issued a Form CA-16, Authorization for Examination and/or Treatment, to Dr. Feingold which authorized him to furnish treatment to appellant.

supervisor. Appellant continued working and, on August 20, 2011, while delivering mail at 15 Birchwood Drive West, she began walking to her next delivery when her right leg gave out, she fell and struck her head. In a November 8, 2011 statement, she indicated that, before her fall, she delivered mail to 15 Birchwood Drive West and rang the doorbell to alert the homeowner. Appellant then walked from the yard, which had a downward incline, to the next delivery. She had three bundles of mail and regular mail and flats in her mailbag and, while walking from the yard, her right leg gave way and she stumbled forward into the street and reached her right hand out and fell onto her right side. Although appellant was wearing a helmet, she had a bump on her head. In a January 26, 2012 statement, she noted pulling a right hip muscle on August 15, 2011. On August 20, 2011, while delivering mail, appellant stumbled and fell in the street and hit her head and right side. She noted that the mail route did not have sidewalks and she was walking in the street when her leg gave out. Appellant submitted an undated witness statement from H. Krasner, who resides at 15 Birchwood Drive West, who noted that on August 20, 2011 he saw appellant fall in the street outside his door after she delivered his mail and rang his doorbell. Mr. Krasner tried to help appellant and noticed that mail was all over the street.

Appellant submitted an August 22, 2011 consultation note from Dr. Feingold who treated her status post fall on August 20, 2011 while delivering mail. She reported falling and hitting her head and neck. Dr. Feingold noted mild tenderness of the right hip and intact motor and sensory function. He diagnosed status post accident on August 20, 2011, mild head contusion and sprain of the right hip. Appellant submitted November 28, 2011 and January 2, 2012 reports from Dr. Shapiro who treated appellant for spine, back, neck, right hip and right leg pain. Dr. Shapiro noted that appellant had a leg giving way episode secondary to her pain and herniation. He diagnosed cervicalgia, lumbago and lumbar radiculopathy. In an November 28, 2011 duty status report, Dr. Shapiro noted clinical findings of pain in the hip and returned appellant to work full time with restrictions. In a January 2, 2012 report, he treated appellant for spine, back, neck, right hip and right knee pain.

In a decision dated May 2, 2012, an OWCP hearing representative affirmed the November 15, 2011 decision.

Appellant continued submitting medical evidence. In a May 13, 2012 report, Dr. Shapiro noted appellant's original injury was on August 15, 2011 when she stepped out of her truck and felt a sharp pain into the hip and was treated on August 22, 2011 after her fall. He noted diminished range of motion of the neck, back and cervical spine. Dr. Shapiro diagnosed cervicalgia, lumbago and lumbar radiculopathy. In an October 11, 2012 report, Dr. Mitchell Goldstein, a Board-certified orthopedist and associate of Dr. Shapiro, treated appellant for neck, left hand and left hip pain. He noted that appellant was a letter carrier and on August 15, 2011 she fell at work and hit her head on the pavement while wearing a helmet and injured her head, neck and right side. Dr. Goldstein also noted a date of injury of August 20, 2011. He noted positive findings on examination and diagnosed lumbar radiculopathy, cervicalgia and lumbago. Dr. Goldstein noted appellant's injuries were directly related to her fall at work on August 15, 2011.

On April 25, 2013 appellant's counsel requested reconsideration and asserted that appellant submitted sufficient evidence to support that she sustained an injury on August 20, 2011 while delivering mail. He provided an October 15, 2012 report from Dr. Shapiro who

opined that the injuries appellant sustained on August 20, 2011 were the result of the fall that occurred on that day. Dr. Shapiro treated appellant on August 22, 2011 and noted that she was seen in the emergency room on August 20, 2011. In a May 7, 2013 report, he noted first seeing appellant on August 22, 2011. Appellant reported working as a letter carrier and noted stepping down from her truck and having pain that shot down her right leg. Several days later, on August 20, 2011, she reported working and her leg gave way causing her to fall injuring her hip and neck. Dr. Shapiro noted diminished neck and lumbar spine range of motion, muscle spasms and positive straight leg raises. A lumbar MRI scan revealed disc protrusions at L4-5 and L5-S1 and a cervical spine MRI scan revealed disc protrusions at C3-4 and C6-7 and C5-6. Dr. Shapiro diagnosed cervicalgia, lumbar radiculopathy and lumbago. He opined that, if the history provided was correct, he felt the injury appellant sustained to her neck, hip and leg were causally related to her work-related injury as a mail carrier on August 20, 2011.

In a July 9, 2013 decision, OWCP denied modification of the May 2, 2012 decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or 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 the applicable time limitation of FECA, 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 is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon 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 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 medical evidence to establish that the employment incident caused a personal injury.<sup>4</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>5</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 his or her subsequent course of action. An employee has not met his or 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

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<sup>3</sup> *Gary J. Watling*, 52 ECAB 357 (2001).

<sup>4</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>5</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

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>6</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. 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>7</sup>

### ANALYSIS

OWCP denied appellant's claim on the grounds that she failed to establish that the events occurred as alleged. However, the evidence supports that on August 20, 2011 appellant was delivering mail and stumbled and fell while working. Appellant submitted a statement from a postal customer where the fall occurred. Mr. Krasner noted that on August 20, 2011 appellant rang his doorbell after dropping off his mail and he opened his door to retrieve the mail and saw appellant fall in the street outside his door. Additionally, the history of injury noted by healthcare providers is consistent with the history provided by appellant. These include emergency room records from August 20, 2011, which noted that appellant reported tripping and falling. The Board finds that appellant's statements are consistent with the surrounding facts and circumstances and she has established that she experienced the employment incident on August 20, 2011 as alleged.

The Board finds, however, that the medical evidence is insufficient to establish that appellant developed a right hip, hand, forehead condition and lumbar and cervical herniated discs causally related to the August 20, 2011 work incident. Appellant did not submit a medical report from an attending physician explaining how the August 20, 2011 work incident caused or aggravated her diagnosed conditions.

The most contemporaneous report is Dr. Banik's August 20, 2011 duty status report. Dr. Banik noted clinical findings of contusion of the head and hip. However, he returned appellant to work without restrictions and did not provide a history of injury or specifically address the cause of appellant's contusions.<sup>8</sup>

Appellant submitted an August 22, 2011 attending physician's report from Dr. Feingold who noted that she fell at work on August 20, 2011 and sustained a head injury, neck sprain and right hip tenderness. He checked a box "yes" that appellant's condition was caused or aggravated by work activity. The Board has held that an opinion on causal relationship which consists only of a physician checking "yes" to a medical form report question on whether the claimant's condition was related to the history given is of little probative value. Without any explanation or rationale for the conclusion reached, such report is insufficient to establish causal

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<sup>6</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>7</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

relationship.<sup>9</sup> In a note dated August 22, 2011, Dr. Feingold noted treating appellant's status post fall on August 20, 2011 while delivering mail. Appellant reported falling and hitting her head and neck. Dr. Feingold diagnosed status post accident on August 20, 2011, mild head contusion and sprain of the right hip. In an August 22, 2011 duty status report, he noted appellant was disabled. However, Dr. Feingold appears merely to be repeating the history of injury as reported by appellant without providing his own opinion regarding whether appellant's condition was work related. To the extent that Dr. Feingold provided his own opinion, the physician failed to provide a rationalized opinion regarding the causal relationship between appellant's head contusion and sprain of the right hip and the August 20, 2011 fall.<sup>10</sup> Therefore, these reports are insufficient to meet appellant's burden of proof.

Reports from Dr. Shapiro provided some support for causal relationship. In his October 15, 2012 report, Dr. Shapiro opined that the injuries appellant sustained on August 20, 2011 were the result of the fall that occurred on that day. He treated appellant on August 22, 2011 and noted that she was seen in the emergency room on August 20, 2011. In a May 7, 2013 report, Dr. Shapiro noted that appellant reported working as a letter carrier and noted stepping down from her truck and experiencing pain that shot down her right leg. Several days later, appellant reported working and her leg gave way causing her to fall injuring her hip and neck. Dr. Shapiro noted MRI scan findings and diagnosed cervicalgia, lumbar radiculopathy and lumbago. He opined that, if the history provided was correct, he felt the injury appellant sustained to her neck, hip and leg were causally related to her work-related injury as a mail carrier on August 20, 2011. These reports, at best, provide conclusory and speculative support for causal relationship. Dr. Shapiro couched his opinion in speculative terms noting that "if the history provided was correct" appellant's injury to her neck, hip and leg were causally related to her work incident on August 20, 2011.<sup>11</sup> He provided no medical reasoning explaining why particular workplace substances caused or aggravated a diagnosed condition. Therefore, this report is insufficient to meet appellant's burden of proof.

Dr. Shapiro's August 22, 2011 report related the history as provided by appellant and stated her pain started on August 20, 2011 while walking, her right leg gave out and she stumbled and fell in the street and hit her head and the right side of her body. He noted findings and diagnosed cervicalgia, lumbago and lumbar radiculopathy. Dr. Shapiro repeats the history reported by appellant rather than providing his own opinion on causal relationship. In any event, he did not provide medical rationale regarding the causal relationship between appellant's head contusion and sprain of the right hip and the August 20, 2011 work incident. Other treatment records and reports from Dr. Shapiro note appellant's history and status but do not provide a reasoned medical opinion explaining how the August 20, 2011 work incident caused or contributed to any diagnosed medical condition and associated disability. The need for rationale is particularly important in this case where the more contemporaneous August 20, 2011 report from Dr. Banik released appellant to work without restriction. Therefore, the evidence from Dr. Shapiro is insufficient to meet appellant's burden of proof.

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<sup>9</sup> *Sedi L. Graham*, 57 ECAB 494 (2006); *D.D.*, 57 ECAB 734 (2006); *Lucrecia M. Nielson*, 41 ECAB 583, 594 (1991).

<sup>10</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001); *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

<sup>11</sup> Medical opinions that are speculative or equivocal in character are of diminished probative value. *D.D.*, 57 ECAB 734 (2006).

Dr. Goldstein reported treating appellant on October 11, 2012 for neck, left hand and left hip pain. Appellant noted being a letter carrier and on August 15, 2011, she fell at work and hit her head on the pavement while wearing a helmet and injured her head, neck and right side. Dr. Goldstein also noted a date of injury of August 20, 2011. He noted diagnoses and opined that appellant's injuries were directly related to her fall at work on August 15, 2011. However, this report is not based on an accurate history of appellant's work injury. Dr. Goldstein notes that appellant fell and injured herself on August 15, 2011; however, appellant reported her injury occurred on August 20, 2011. The Board has held that medical opinions based on an inaccurate history have diminished probative value.<sup>12</sup> Even viewing the date-of-injury discrepancy as a typographical error, Dr. Goldstein did not provide medical reasoning to support his conclusion on causal relationship. His report is insufficient to establish the claim.

Other medical evidence submitted by appellant, including reports of diagnostic testing, fail to provide an opinion on the causal relationship between appellant's job and her diagnosed lumbar condition. For this reason, this evidence is insufficient to meet appellant's burden of proof. Appellant also submitted August 20, 2011 emergency room records from an unidentified provider which noted that appellant reported tripping and falling. As this is not properly identified, it does not constitute probative medical evidence.<sup>13</sup>

The Board finds that the medical evidence is insufficient to establish that the August 20, 2011 work incident caused or contributed to the claimed conditions and disability. Consequently, OWCP therefore properly found that appellant did not meet her burden of proof in establishing her claim.

On appeal, appellant's counsel disagrees with OWCP's decision denying her claim for compensation and asserts that she sustained an employment-related injury on August 20, 2011 and has submitted sufficient medical evidence to establish that the diagnosed conditions are related to the employment-related incident. As noted above, the Board finds that appellant established that the incident occurred. However, the medical evidence does not sufficiently relate any of appellant's conditions to the August 20, 2011 work incident. Reports from appellant's physician's failed to provide sufficient medical rationale explaining how appellant's injuries were causally related to this incident.

The Board further notes that the employing establishment issued a properly completed Form CA-16 to appellant on August 20, 2011, authorizing treatment by Dr. Feingold as medically necessary for the effects of his injury. The Board notes that where, as in this case, an employer properly executes a Form CA-16, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim.<sup>14</sup> The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by

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<sup>12</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>13</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>14</sup> *R.S.*, Docket No. 13-1670 (issued October 25, 2013). See *Elaine M. Kreyborg*, 41 ECAB 256, 259 (1989).

OWCP.<sup>15</sup> The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form. On return of the case record, OWCP should review whether appellant has been reimbursed for any incurred medical expenses.<sup>16</sup>

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 failed to meet her burden of proof to establish that her claimed conditions were causally related to her employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the July 9, 2013 decision of the Office of Workers' Compensation Programs is affirmed, as modified.<sup>17</sup>

Issued: July 29, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>15</sup> See 20 C.F.R. § 10.300(c).

<sup>16</sup> See *R.S.*, *supra* note 14.

<sup>17</sup> Richard J. Daschbach, Chief Judge, who participated in the preparation of the opinion, was no longer a member of the Board after May 16, 2014.