



unable to pull out the bottom of a broken postal container. She stopped work on November 13, 2011 and was placed on continuation of pay until December 27, 2011.

On November 16, 2011 the employing establishment controverted the claim. It contended that appellant had not established fact of injury, that she did not report the claim for two days, and that a supervisor indicated that she was not working at the time of the alleged incident.<sup>2</sup>

A November 29, 2011 magnetic resonance imaging (MRI) scan study showed a left neural foraminal disc herniation with “moderate left neural foraminal narrowing” and mild narrowing on the right.

On December 2, 2011 Dr. Mahesh D. Chhabria, a Board-certified neurologist, diagnosed lumbosacral strain and found appellant should remain off work for three weeks. On December 28, 2011 he opined appellant was disabled from work for the next three weeks.<sup>3</sup>

OWCP accepted the claim as a minor injury but on January 11, 2012 reopened the claim because appellant had not returned to work.

By letter dated January 11, 2012, OWCP requested that appellant submit additional factual and medical evidence, including a detailed report from her attending physician addressing the causal relationship between any diagnosed condition and the identified work incident.

By letter dated January 29, 2012, appellant related that on November 12, 2011 she strained her back when she tried to pull the gate out of a postal container. She stated, “The post con has a latch door at the very bottom that allows you to pull out and up to lock it. I proceeded to pull the gate out and it was unknowingly stuck causing me to strain my lower back...” Appellant related that she told her supervisor of the incident without delay. The next morning she was unable to get out of bed.

In a note dated February 16, 2012, Dr. Chhabria indicated that on November 12, 2011 appellant sustained a low back injury at work. He found that she could resume limited-duty employment on February 27, 2012.

By decision dated February 27, 2012, OWCP denied appellant’s claim after finding that she did not establish fact of injury.

In a form report dated March 19, 2012, Dr. Chhabria diagnosed lumbosacral strain secondary to a herniated nucleus pulposus and right L5 radiculopathy. He provided the history of injury as low back pain that began at work after appellant bent down to “open a tight drawer.” Dr. Chhabria checked “yes” that the condition was causally related to employment, and provided as a reason that appellant “used a defective piece of equipment causing injury to lower back.”

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<sup>2</sup> On April 4, 2013 OWCP requested that the employing establishment clarify why it stated that appellant was not at work at the time of the November 12, 2011 incident; however, it did not respond to the request.

<sup>3</sup> In a disability certificate dated January 10, 2012, Dr. Chhabria found that appellant was disabled from work for three more weeks.

He advised that she was totally disabled from December 2, 2011 to March 20, 2012. Dr. Chhabria noted in 2012 she had history of remote lower back injury which was different from the 1993 work injury to low back.

On April 4, 2012 appellant requested reconsideration.

In a decision dated May 29, 2012, OWCP modified the February 27, 2012 decision to reflect that appellant had submitted medical evidence containing a diagnosis but found that she had not established that the condition arose from the November 12, 2011 work incident.

On March 18, 2013 appellant requested reconsideration.<sup>4</sup>

In a report dated March 1, 2013, Dr. Chhabria found that appellant's low back pain had improved. He stated, "On reviewing [appellant's] symptoms and MRI scan findings as well as the description of her low back injury, with a reasonable degree of medical certainty, [her] low back pain occurred as a result of the bending injury at work in November of 2011. There is a direct causal relationship between the type of injury and her symptoms." Dr. Chhabria diagnosed lumbosacral strain and a lumbar herniated nucleus pulposus.<sup>5</sup>

By decision dated May 14, 2013, OWCP denied modification of its May 29, 2012 decision.

In a narrative report dated February 16, 2012, received by OWCP on November 14, 2013, Dr. Chhabria diagnosed "lumbosacral strain secondary to [a] disc protrusion with right L5 Adler symptoms which had resolved." He noted that appellant's symptoms began at work when she "bent down and had difficulty opening a drawer and subsequently when she came up she was experiencing low back pain. MRI [scan] of the lumbar spine showed a small disc protrusion at L4-5." Dr. Chhabria found that she could return to work with restrictions.

On May 16, 2012, Dr. Chhabria related that appellant had returned to work five days earlier. He diagnosed lumbosacral strain and a lumbar herniated nucleus pulposus with significant improvement.

In a form report dated July 26, 2013, Dr. Chhabria diagnosed lumbosacral strain with right radiculopathy. He provided the history as a low back injury after bending at work and checked "yes" that the condition was caused or aggravated by employment. Dr. Chhabria advised that appellant was totally disabled from December 2, 2011 to March 20, 2012. He noted that she had reinjured her back on August 16, 2012.

On October 17, 2013 appellant requested reconsideration.

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<sup>4</sup> In a letter dated February 18, 2013, appellant's niece related that her aunt was unable to get out of bed following a November 12, 2011 injury. She had to help appellant perform activities of daily living for around four months.

<sup>5</sup> The record contains the first page of an August 16, 2012 medical report.

In a decision dated January 31, 2014, OWCP denied modification of its May 14, 2013 decision. It found that appellant had not submitted sufficiently rationalized medical evidence to show that she sustained a work injury on November 12, 2011.

On appeal appellant contends that she submitted sufficient evidence to establish her claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>6</sup> 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; that an injury was sustained while 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>7</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>8</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence.<sup>9</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>10</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>11</sup>

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility to see that justice is done.<sup>12</sup> The nonadversarial policy of proceedings under FECA is reflected in OWCP’s regulations at section 10.121.<sup>13</sup>

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<sup>6</sup> 5 U.S.C. § 8101 *et seq.*

<sup>7</sup> See *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>8</sup> See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>9</sup> See *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

<sup>10</sup> See *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>11</sup> *Id.*

<sup>12</sup> See *Jimmy A. Hammons*, 51 ECAB 219 (1999).

<sup>13</sup> 20 C.F.R. § 10.121.

## ANALYSIS

Appellant alleged that she sustained an injury to her low back on November 12, 2011 when she tried to pull the gate out of a defective postal container. OWCP accepted that the incident occurred at the time, place, and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that she sustained an injury as a result of this incident.

In reports dated December 2 and 28, 2011, Dr. Chhabria found that appellant was disabled from employment. On February 16, 2012 he diagnosed lumbosacral strain due to a disc protrusion and noted that her symptoms started after she tried to open a drawer at work. In a March 19, 2012 form report, Dr. Chhabria noted that appellant sustained low back pain after trying to open a tight drawer at work. He diagnosed lumbosacral strain secondary to a herniated nucleus pulposus and right L5 radiculopathy. Dr. Chhabria checked “yes” that the condition was causally related to employment. He provided rationale for his causation finding by explaining that appellant “used a defective piece of equipment causing injury to lower back.” On March 1, 2013 Dr. Chhabria diagnosed lumbosacral strain and a lumbar herniated nucleus pulposus. He related that based on appellant’s symptoms, her description of injury and the result of diagnostic studies, “[her] low back pain occurred as a result of the bending injury at work in November 2011. There is a direct causal relationship between the type of injury and her symptoms.” In a July 26, 2013 form report, Dr. Chhabria diagnosed lumbosacral strain with right radiculopathy. He provided the history as a low back injury after bending at work and checked “yes” that the condition was caused or aggravated by employment.

The Board has reviewed Dr. Chhabria’s reports and notes that he provided a clear opinion that the November 12, 2011 work incident caused the diagnosed conditions of lumbosacral strain due to a herniated disc and radiculopathy. He recognizes the preexisting low back condition, but supports his diagnosis with the objective findings of the current MRI scan and physical examination. Dr. Chhabria evinced knowledge of the factual basis November 12, 2011 work incident. His opinion is supportive, unequivocal, bolstered by objective findings, and based on a firm diagnosis and an accurate work history. Additionally, Dr. Chhabria’s reports are not contradicted by any medical evidence of record.<sup>14</sup> His opinion lacks only an explanation of how the diagnosed condition was caused by trying to pull a gate out of a broken postal container. Consequently, while the medical evidence from Dr. Chhabria is insufficiently rationalized to meet her burden of proof to establish that she sustained a back injury on November 12, 2011, it raises sufficient inference of causal relationship to require further development by OWCP.<sup>15</sup> Accordingly, the Board will remand the case to OWCP. On remand, it should further develop the medical record to determine whether appellant sustained an injury to her lower back on November 12, 2011 causally related to factors of her federal employment. Following this and such further development as OWCP deems necessary, it shall issue a *de novo* decision.

## CONCLUSION

The Board finds that the case is not in posture for decision.

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<sup>14</sup> See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>15</sup> *Id.*

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 31, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: November 25, 2014  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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