



was injured in the performance of duty. In controversion of continuation of pay he contended that appellant's injury was recurring. Mr. Brooks noted that he somewhat agreed with the facts about the injury as described by appellant. Appellant stopped work on July 16, 2014 and returned to work on July 21, 2014.

By letter dated July 29, 2014, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim. It indicated that the evidence was not sufficient to establish that he experienced the incident or employment factor alleged to have caused the injury. OWCP specifically requested that appellant substantiate the factual elements of his claim and respond to a questionnaire.

Appellant submitted a July 16, 2014 work excuse note from a health care provider with an illegible signature who noted he could return to work on July 19, 2014 without restrictions. On August 7, 2014 he was treated by Dr. Gary P. Cram, Jr., a Board-certified neurologist, for progressively worse neck and back pain with numbness in his left arm. Dr. Cram noted appellant's neck, back, right leg, thigh, and calf symptoms were consistent with his old L5 radiculopathy. He noted magnetic resonance imaging (MRI) scans in 2012 revealed significant spondylitis disease and cervical stenosis at C3-4. Dr. Cram noted the physical examination revealed significant pain-limited weakness. In reports dated August 7 to 20, 2014, he noted appellant's pain continued to progress in his back, radiating down the right lateral, posterior thigh, lateral calf top of his foot and the big toe. X-rays showed progression of the disc disease at L4-5, recurrent disc herniation at L4-5 causing stenosis of thecal sac, right L5 compression, severe modic changes, collapse of disc space, angulation, kyphosis, discogenic changes in the endplates, marked facet arthropathy, and degenerative changes in the facet joints. Dr. Cram recommended decompression, discectomy, and fusion at that level. An August 14, 2014 MRI scan revealed central and rightward recurrent disc extrusion, L4 and L5 nerve root impingement, moderate canal stenosis. An August 14, 2014 cervical spine MRI scan showed broad-based disc protrusion and osteophyte ridging at C3-4 and mild bilateral foraminal encroachment. An attending physician's report from Dr. Cram dated August 19, 2014 diagnosed herniated lumbar disc with cervical radiculopathy. He noted appellant was totally disabled from August 7 to November 24, 2014. An August 20, 2014 duty status report from Dr. Cram noted clinical findings of herniated lumbar disc and note appellant was totally disabled.

In a decision dated September 5, 2014, OWCP denied appellant's claim, finding that the evidence did not support that the injury or events occurred as alleged.

In an appeal request form dated September 22, 2014, appellant requested reconsideration. In a September 17, 2014 statement, he noted he was a tractor trailer operator for 17 years. Appellant noted that "on or around July 15, 2014, I recently had another accident on the yard in which caused me sharp pain in my lower back and caused my left arm to swell up." He noted driving his unit and hitting a bump around dock 63 which caused his truck to vibrate and bounce jarring his low back. Appellant noted the yard had bumps, holes, cracks, and crevices which are unavoidable when operating units in the yard.

Appellant submitted an August 25, 2014 report from Dr. Sharon A. Wolters, a Board-certified family practitioner, who treated appellant on July 3, 2014 for chest pain. Dr. Wolters noted a cardiac stress test was normal and attributed his symptoms to his work-related back

issues. In a September 10, 2014 operative report, Dr. Cram performed a redo of a decompressive lumbar laminectomy and medial fasciectomy and radical foraminotomies of the L4 and L5 nerve roots at L4-5, posterior lumbar interbody fusion, and posterior lateral arthrodesis at L4-5. He diagnosed degenerative disease, recurrent herniated nucleus pulposus, severe lumbar spinal stenosis and severe foraminal stenosis of the L4 and L5 nerve roots. In duty status reports dated September 23 and October 16, 2014, Dr. Cram noted that appellant was status post lumbar fusion and could not work. Appellant submitted physical therapy notes from September 12, 2014.

In a decision dated November 26, 2014, OWCP denied modification of the prior 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.”<sup>2</sup> 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>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another.

The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>4</sup> In some traumatic injury cases this component can be established by an employee’s uncontroverted statement on the Form CA-1.<sup>5</sup> An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee’s statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.<sup>6</sup> A consistent history of the injury as reported on medical reports, to the claimant’s supervisor and on the notice of injury can also be evidence of the occurrence of the incident.<sup>7</sup> 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 statements in

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>4</sup> *Supra* note 2.

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>6</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>7</sup> *Id.* at 255-56.

determining whether a *prima facie* case has been established.<sup>8</sup> Although an employee's 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>9</sup> an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.<sup>10</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. 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>11</sup>

### ANALYSIS

In the present case, appellant, worked as a tractor trailer operator and filed a traumatic injury claim. He alleged that on or about July 15, 2014 he injured his back as a result of "truck vibration and parking lot surface." However, the Board notes inconsistencies in the evidence which cast serious doubt upon the validity of the claim. The Board finds that the claimed employment incident did not occur as alleged.

Appellant submitted differing statements regarding how his low back injury occurred. He initially stated on the Form CA-1 signed on July 23, 2014, that on July 15, 2014 he injured his back as a result of his truck vibrating while on the employing establishment parking lot surface. In a statement dated September 17, 2014, appellant related that "on or around July 15, 2014, I recently had another accident on the yard in which caused me sharp pain in my lower back and caused my left arm to swell up." He noted driving his unit and that he hit a bump around dock 63 which caused his truck to vibrate and bounce jarring his low back. Appellant noted the yard currently has bumps, holes, cracks, and crevices which are unavoidable when operating units in the yard. He did not explain the discrepancy between the two histories of injury that he provided.

The medical evidence submitted did not provide a history of injury. A July 16, 2014 work excuse note from an unidentified health care provider noted that appellant could return to work on July 19, 2014 without restrictions but the provider did not provide a history of injury. Likewise, reports from Dr. Cram failed to provide a history of injury on July 15, 2014. Under these circumstances, the lack of confirmation of the claimed incident and inconsistencies about the manner of how he was injured cast serious doubt upon the validity of the claim.

Additionally, there are no contemporaneous statements from persons present at the employing establishment supporting that the incident occurred as alleged. While an injury does

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<sup>8</sup> *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

<sup>9</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>10</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>11</sup> *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, the employee's statement must be consistent with the surrounding facts and circumstances and with his subsequent course of action. The medical reports do not relate a consistent history of injury.

For these reasons, the Board finds that appellant has not established that the July 15, 2014 incident occurred as alleged. It is not necessary for the Board to consider the medical evidence regarding causal relationship.<sup>12</sup> Appellant has not met his burden of proof in establishing his claim.

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 has failed to establish that he sustained an injury on July 15, 2014 in the performance of duty, causally related to factors of his federal employment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 26, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 12, 2015  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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<sup>12</sup> See *S.P.*, 59 ECAB 184 (2007).