

and hamstring while performing his job duties. He first became aware of the condition and its relationship to his work on August 30, 2011. Appellant stopped work on August 30, 2011 and returned on April 10, 2012. He stopped work again on May 10, 2012 and returned on August 16, 2012.² The employing establishment challenged the claim, noting that causal relationship had not been established.

In a May 27, 2012 letter, the employing establishment stated that appellant had returned to work only 13 days prior to filing his claim. Appellant had taken Family and Medical Leave Act (FMLA) leave from August 17 to 25, 2011. The employing establishment maintained that appellant was operating a disc jockey (DJ) business and his injuries were caused by lifting heavy speakers and sound machines.

In a September 14, 2012 letter, OWCP requested that appellant submit additional factual and medical evidence in support of his claim. It noted that the evidence was insufficient to establish that he actually experienced the employment factors alleged to have caused injury. OWCP also advised appellant to submit a medical report with a physician's explanation as to how employment activities caused or aggravated a diagnosed condition.

Thereafter, OWCP received evidence from appellant and the employing establishment. In a June 17, 2010 medical report, Dr. Jennifer Johnson-Caldwell, a Board-certified internist, noted that appellant presented with a history of cervical strain that was diagnosed in November 2006, caused by rapidly lifting packages at work. She indicated that appellant's duties were modified on January 29, 2010. Appellant complained of numbness and tingling in his right arm and chronic head and neck pain. Physical examination revealed full range of motion in the neck. Appellant experienced pain with range of motion in neck, forward flexion and rotation, and with bilateral shoulder extension. Dr. Johnson-Caldwell diagnosed cervical strain and cervical radiculopathy.

An April 6, 2012 duty status report with an illegible signature diagnosed cervical and lumber strain. It further provided that appellant was permitted to return to regular duty on April 10, 2012.³ In a May 1, 2012 work status report, Dr. Andrea Smith, a chiropractor, advised that appellant could return to work on May 8, 2012.

In a report dated May 3, 2012, Dr. Louis Train, Board-certified in family medicine, related that appellant had a gradual onset of pain in both shoulders and his lower back. He reported that appellant pushed a loaded, 1,500 pound all-purpose container (APC) twice per week. Dr. Train stated that the APC was often defective and pushing it caused "great stresses" to appellant's lower back and hamstrings. On examination, appellant had slight scoliosis to the left of the L2-4 area. Dr. Train noted tenderness of the sacroiliac joint bilaterally. The left gluteus was normal, but the right gluteus was tender at the origin and insertion. The hamstrings showed slight tenderness and some contractures. Dr. Train recorded tenderness of levator scapulae,

² The Board notes that appellant has a claim from a November 29, 2006, injury that was accepted by OWCP for cervical and thoracic sprain under file number xxxxxx938. This claim is not before the Board on appeal.

³ OWCP also received an April 10, 2012 medical record, completed by Lois Estes, a registered nurse, documenting appellant's discharge from a medical facility for "chest pain."

supraspinatus tendons, and longhead of biceps tendons. Range of motion was decreased in both shoulders. Dr. Train diagnosed lumbar and hamstring sprain/strain, and shoulder sprain. He opined that the injuries were due to heavy stressors at work and directly related to performing work duties. In a May 21, 2012 duty status report, he noted that appellant was unable to lift, perform repetitive motions, or bend at floor level.

The employing establishment provided a position description for a general expeditor. The job involved, among other duties, coordinating the movement of mails from the platform to processing areas, expediting the distribution and dispatch of all mails processed in the assigned work area, and manually distributing all classes of mail.

In a July 9, 2012 letter, appellant listed his duties as lifting, bending, pushing, and pulling mail containers in and out of elevators. He related that he began having low back pain in 2011 and delayed filing a claim for compensation because he believed that the pain would resolve. Appellant noted having preexisting degenerative disc disease and asserted that his work assigned duties aggravated his condition.⁴

In an August 16, 2012 duty status report, Dr. Train noted that appellant suffered from decreased range of motion, and discomfort with pushing, pulling, and lifting. He indicated that appellant was able to perform regular work.

From September 13 to 27, 2012 the employing establishment's Office of Inspector General (OIG) investigated appellant for workers' compensation fraud. On September 24, 2012 appellant was interviewed by OIG agents. According to their report, appellant related that he pushed defective APCs, weighing upwards of 1,500 pounds, two to three times per week. He further asserted that he originally filed an occupational disease claim in June 2012, but due to a paperwork error, it was not finalized until August 2012. In a September 24, 2012 statement to the OIG, appellant's supervisor claimed to be unaware of malfunctioning APCs and averred that APCs in appellant's work area should weigh approximately 300 pounds. In a September 27, 2012 report of investigation, the OIG recommended that OWCP deny appellant's claim. The employing establishment also submitted an absence analysis indicating that appellant was absent from work for intermittent and extended periods from January 2009 to June 2012.

In an October 8, 2012 statement, Linda Humphrey, appellant's former representative, related that appellant had low back discomfort for "quite some time" before seeking medical treatment. She noted that appellant was diagnosed with lumbar, hamstring, and shoulder sprain/strain. Ms. Humphrey described appellant's duties as lifting, bending, pushing, and pulling containers of mail on and off elevators. She also indicated that appellant was not engaged in any nonwork-related activities that could have caused his claimed injury.

In an October 9, 2012 letter, the employing establishment stated that it was notified by appellant on August 30, 2011 that he suffered a lumbar and hamstring sprain/strain, and shoulder sprain. He had filed several claims for compensation, including a recurrence of disability (Form CA-2a) on September 29, 2011, a traumatic injury claim (Form CA-1) on June 15, 2012, and occupational disease claims (Form CA-2) on May 24, June 15, and September 6, 2012. The

⁴ An identical letter dated May 21, 2012 was also submitted to OWCP.

employing establishment contended that appellant worked only 112 days prior to alleging an injury on August 30, 2011, and 13 days prior to filing his claim. It further maintained that appellant never reported defective equipment and employees were trained not to utilize damaged equipment. The employing establishment stated that an unloaded APC weighed between 209 and 235 pounds.

On November 27, 2012 OWCP denied appellant's claim, finding the evidence was insufficient to establish that the events occurred as alleged.

Appellant filed a request for reconsideration on December 24, 2012. In a January 11, 2013 statement, he reported that he began experiencing pain in August 2011 and sought medical treatment from Dr. Train in May 2012. Appellant related that he filed a claim on June 8, 2012, after Dr. Train advised that his injuries were work related. He reported his work duties as lifting, bending, stooping, twisting, and pushing. Appellant claimed that pushing APCs into elevators required "great force" due to ridges on the workroom floor and a space between the floor and elevator. He reiterated that the APCs were defective and contended that they could weigh between 1,200 and 1,500 pounds.

On March 26, 2013 OWCP reviewed the merits of appellant's claim and denied modification of its November 27, 2013 decision.

Appellant, in an April 15, 2013 statement, requested reconsideration. He again specified that he utilized defective equipment to transport mail and noted that the equipment often worked properly until it was loaded. Appellant further reported that he operated a DJ referral service, but had not performed since his 2006 injury. He acknowledged frequently missing work prior to August 30, 2011 due to a previous work-related injury.

In a May 17, 2013 statement, appellant alleged that the employing establishment encouraged the use of damaged equipment. In an attached statement dated December 26, 2012, a coworker asserted that appellant's duties and responsibilities were physically demanding. He also maintained that APCs were regularly overloaded, that equipment was defective, and that supervisors were uncooperative and dishonest.⁵

In an October 7, 2013 decision, OWCP denied modification of its March 26, 2013 decision, finding the evidence insufficient to establish that the events occurred as alleged.

Appellant, through his former representative, requested reconsideration on February 6, 2014. In a February 4, 2014 report, Dr. Train described appellant's job duties as pushing and pulling APCs and wire containers. Appellant informed Dr. Train that APCs could weigh up to 1,500 pounds. Dr. Train diagnosed lumber, hamstring, and shoulder sprain/strain and indicated that an APC's weight was immaterial, as pushing or pulling lightweight equipment "could result in a sprain/strain."

⁵ OWCP also received letters dated August 18 to September 7, 2010, reflecting that the employing establishment informed appellant, pursuant to National Reassessment Process, that it was unable to identify enough available necessary tasks within his medical restrictions in order for him to complete a full day of work.

On April 30, 2014 OWCP reviewed the merits of appellant's case and denied modification of its prior decision.

On May 15, 2014 appellant, through counsel, filed a request for reconsideration. He submitted the results of an Occupational Safety and Health Administration inspection dated January 4, 2011, warning of the ergonomic risk factors associated with processing and transporting mail. Also submitted was an excerpt from the employing establishment's "container methods" handbook, reflecting that a general purpose mail container (GPMC) weighed 230 pounds empty and has a maximum cargo load of 1,200 pounds. An employing establishment publication regarding postal terms establishes that the terms APC and GPMC are used interchangeably.

In an August 12, 2014 report, Dr. Mood Nigam, a Board-certified neurologist, reported that appellant underwent various strength tests to develop a treatment plan for lumbar and shoulder sprain. An unsigned August 5, 2014 work status note indicated that appellant was seen for medical treatment on the same date and was scheduled for a follow-up appointment on August 12, 2014.

In a February 25, 2015 decision, OWCP denied modification of its April 30, 2014 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,⁶ including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁷ The employee must also establish that he or she sustained an injury in the performance of duty as alleged, and that his or her disability for work, if any, was causally related to the employment injury.⁸

To establish that an injury was sustained in the performance of duty in a claim for occupational disease, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁹

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.¹⁰

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁷ *R.C.*, 59 ECAB 427 (2008).

⁸ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994).

¹⁰ *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

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 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 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.¹¹

ANALYSIS

Appellant alleged that his duties as a general expeditor aggravated his back, shoulders, neck, and hamstring. OWCP denied his claim finding that he had not established the alleged work events. The Board finds that OWCP properly denied the claim.

On September 6, 2012 appellant filed an occupational disease claim, which reported that he first became aware of a work-related injury on August 30, 2011. In his claim, he did not identify specific duties he performed at particular times that gave rise to his claimed conditions. In April or May 2012, approximately eight months after his alleged work-related injury, appellant sought medical treatment. Dr. Train's May 3, 2012 medical report is the earliest evidence of record mentioning appellant's employment duties in connection with a diagnosed condition. Appellant, in his January 11, 2013 statement, contended that he delayed seeking medical treatment because the pain was "off and on." However, the record evidence establishes that he missed work from August 30, 2011 to April 10, 2012. Appellant ostensibly delayed seeking medical treatment for an injury that had contemporaneously prevented him from working. Such circumstances cast serious doubt upon the validity of his claim.

The Board further notes that appellant did not file his claim for many months after sustaining his claimed conditions. In a January 11, 2013 statement, appellant maintained that he did not file the claim until Dr. Train confirmed that the injury was work related in May 2012. His explanation regarding his delay is unpersuasive because his September 6, 2012 claim form stated his awareness of a relationship between his condition and his work.

In his occupational disease claim, appellant alleged that his expeditor duties caused his injuries. However, in a February 4, 2014 letter, Dr. Train reported that appellant's conditions were "a result of" an incident on August 30, 2011 involving an APC. This history of injury, as reported by Dr. Train, is inconsistent with an occupational disease claim. Dr. Train's description implicates a specific event as the cause of appellant's condition, rather than appellant's work duties, as they occurred over more than one shift.¹²

¹¹ *Betty J. Smith*, 54 ECAB 174 (2002).

¹² A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

There are also inconsistencies in the record with regard to how the claimed injury occurred. In statements dated September 24, 2012, January 11 and April 15, 2013, appellant detailed pushing and pulling APCs weighing upwards of 1,500 pounds and using defective APCs approximately twice per week. However, in a September 24, 2012 statement to the OIG and in an October 9, 2012 letter, appellant's supervisor stated that defective equipment was not used. Appellant's supervisor also asserted that appellant never complained of or reported defective equipment. This directly contradicts appellant's claim of sustaining an injury due to defective equipment. The coworker's December 26, 2012 statement that equipment was defective is not specific as to the times and places that particular pieces of equipment were defective.

Based on the foregoing, the Board finds that appellant did not present a clear and consistent account of how and when his injury occurred and that he failed to establish his occupational disease claim. Since appellant had not established the factual component of fact of injury, it is unnecessary for the Board to consider the medical evidence with respect to causal relationship.¹³

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 appellant has not met his burden of proof to establish that he sustained an occupational disease in the performance of duty.

¹³ See *D.F.*, Docket No. 10-1774 (issued April 18, 2011).

ORDER

IT IS HEREBY ORDERED THAT the February 25, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 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