

bent down to pick up a tray of mail. On the back of the form the employing establishment controverted the claim and questioned whether it was an employment-related injury.

In support of her claim, appellant submitted a July 24, 2014 form wherein she related that she sustained left side pain on July 23, 2014 when her jeep hit a hole in the road.

In a July 24, 2014 form report, Joy Justice, a nurse practitioner, noted appellant's complaints of left-sided pain and an injury date of July 24, 2014. The history of injury however related that appellant sustained pain in her left buttock which radiated into her left leg after hitting a bump on a gravel road while driving a mail truck on July 23, 2014, not July 24, 2014. Diagnoses included sciatica and lumbar back pain.

The record contains a number of duty status reports (Form CA-17) dated from July 24, 2014 which contain diagnoses of lower back pain with left sciatica. These forms note work restrictions. The date of injury is listed as July 24, 2014, or no injury date is noted. Some of the forms were signed by Ms. Justice, nurse practitioner, while others contained illegible signatures.

In a statement dated July 25, 2014, Mike Ringholz, a supervisor, related that on July 23, 2014 appellant approached him to have her scanner checked after returning from delivering her mail route. He stated that appellant made no mention to him regarding any injury or accident.

Appellant, in a July 28, 2014 statement, related that she sustained a work-related back injury on July 24, 2014. She described feeling a pull in her left hip when getting up after bending down to pick up another tray of mail. Appellant related that her left foot was numb, she shook it and then her entire left side went numb.

In an August 19, 2014 statement, Glenn Angenmeier, postmaster, related that appellant provided different accounts of how she was injured and different dates of the incident as either July 23, 2014 or July 24, 2014. In one account, appellant related that her injury occurred due to hitting a hole while driving a mail jeep, while in another account she alleged that the injury occurred as the result of reaching down to pick up another tray of mail from the floor. Mr. Angenmeier also noted that statements from two supervisors, Mr. Ringholz and Vickie Boles, contradict appellant's version of how her injury occurred.

By letter dated August 25, 2014, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised as to the medical and factual evidence required to support her claim and given 30 days to provide this information.

On September 15, 2014 OWCP received Novant Health form reports, which noted an injury date of July 24, 2014. The forms related that appellant's injury occurred when she bent down to pick up mail. The signatures on the forms were again illegible.

By decision dated October 2, 2014, OWCP denied appellant's claim as the evidence of record was insufficient to establish that the incident occurred as alleged.

On November 10, 2014 OWCP received appellant's request for review of the written record by an OWCP hearing representative dated November 3, 2014.

In support of the request for review of the written record, OWCP received a letter dated October 30, 2014 and a supplemental statement dated November 2, 2014 from appellant explaining how her injury occurred. In the October 30, 2014 letter, appellant stated that on September 4, 2014 she wrote an 11-page statement describing how the July 24, 2014 incident occurred and provided clarification of her injury. She stated that she did not report hitting a bump while driving her mail jeep on a gravel road on July 23, 2014. Appellant related feeling a pull in her left hip or butt, which hurt slightly, but was “no big deal.” She explained that it was routine to go on and off the main road and ride in ditches. As to the July 24, 2014 incident, appellant noted that she bent down to get another tray of mail from the floor while putting mail in a case. She felt a pull in her lower back and hip while sitting on the ledge and twisting and turning. While working the mail, appellant related feeling a tingling sensation going down her back to her buttocks, left leg, and left foot. She related that she could not stand up after trying to shake her foot. At this point, appellant went to see Ms. Boles, an acting supervisor, and informed her that she needed to go the emergency room as she was hurt. After some discussion as to how appellant would get to the emergency room, Ms. Boles stated that she would take appellant. Appellant concluded that she was diagnosed with sciatica, had physical therapy from September 3 to October 9, 2014, and saw her doctor for this injury from July 24 to October 21, 2014.

In the November 2, 2014 statement, appellant related that she felt a pull in her hip and lower back which turned into a tingling sensation going down her back to her left foot while casing mail. She stated that, while shaking her left foot to wake it, all of sudden she was unable to stand up straight as she was bent over. At this point, appellant felt pain like she never felt before going from her back all the way to her foot.

On November 11, 2014 OWCP also received an October 21, 2014 form report from Dr. Mark L. Dumonski, an examining Board-certified orthopedic surgeon. Dr. Dumonski diagnosed low back pain and provided work restrictions. By checkmark he indicated that the work incident or job duties described by appellant caused or significantly contributed to the condition or injury.

By decision dated December 17, 2014, OWCP denied appellant’s request for review of the written record as the request was untimely filed.

On December 23, 2014 OWCP received appellant’s request for reconsideration dated December 18, 2014.

Following the December 17, 2014 decision, appellant submitted medical and factual evidence including a number of CA-17 forms for the period July 24 to October 8, 2014 and an October 21, 2014 report. The CA-17 forms noted that the cause of injury was unknown except for the January 23, 2015 form which noted that the injury occurred while appellant bent over to pick up mail and felt back pain. The signatures on the forms were again illegible.

By decision dated February 2, 2015, OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁵ 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.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.⁸ 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 doubt on an employee's statements.⁹ However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹⁰

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof to establish a traumatic injury on July 24, 2014, as alleged. There are inconsistencies in the evidence which cast serious doubt on the validity of her claim.

² 5 U.S.C. § 8101 *et seq.*

³ *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁴ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

⁶ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁷ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

⁸ *See Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *Linda S. Christian*, 46 ECAB 598 (1995).

¹⁰ *Gregory J. Reser*, 57 ECAB 277 (2005).

OWCP found that the medical and factual evidence of record contained conflicting evidence regarding how the alleged injury occurred. The Board has held that 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.¹¹ Although appellant alleged on her Form CA-1 that she felt numbness on her left side after bending down to pick up a tray of mail from the floor, this assertion was contradicted by statements from two supervisors, Mr. Ringholz and Ms. Boles. Mr. Angenmeier, the postmaster, also provided a statement which contradicts appellant's account of how the injury occurred as he stated that she provided two different injury dates and different accounts of how she was injured. Appellant also failed to submit any corroborating witness statements in response to OWCP's request.

The evidence of record also contains inconsistencies that cast serious doubt as to the date of the alleged work incident. The early medical evidence submitted by appellant noted that the cause of the alleged July 24, 2014 injury was unknown or were silent on the date and cause of her condition. These reports are either from a physician assistant or otherwise unidentified authors as the signatures are illegible. The record also contains July 24, 2014 form reports attributing appellant's injury to hitting a bump on a gravel road while driving a mail jeep on July 23, 2014. These reports are of no probative value as the author or authors cannot be identified as physicians.¹² Furthermore a physician assistant is not a physician as defined under FECA.¹³

Appellant also submitted an October 21, 2014 form report by Dr. Dumonski who checked a box marked "yes" as to whether the diagnosed condition was caused by the work incident or job duties described by appellant, but provided no injury date. This opinion is of little probative value on its face as it provides no date or history of injury and therefore does not corroborate appellant's history that her injury occurred on July 24, 2014.¹⁴

The Board finds that appellant has failed to meet her burden of proof to establish that an incident occurred on July 24, 2014, as alleged.

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 not met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on July 24, 2014, as alleged.

¹¹ *Id.*

¹² *See Merton J. Sills*, 39 ECAB 572 (1988).

¹³ *See* 5 U.S.C. § 8101(2) which defines physicians under FECA.

¹⁴ *See generally Connie Johns*, 44 ECAB 560 (1993). The accuracy and completeness of the physician's knowledge of the facts and medical history, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion are facts which determine the weight to be given to each individual report.

ORDER

IT IS HEREBY ORDERED THAT the decision dated February 2, 2015 of the Office of Workers' Compensation Programs is affirmed.¹⁵

Issued: January 7, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁵ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015 and did not participate in the preparation of this decision.