

reportedly occurred at 12:30 p.m. In a separate statement, appellant explained that there were two steps before entering the building. When she tried to pull the cart up the stairs it was too heavy so she left it in front of the building and proceeded to deliver the mail. At approximately 1:30 p.m. appellant started to feel pain in her neck, right arm, and back. She reportedly slowed down a little to ease the pain. Around 2:30 p.m., the pain started to worsen, so appellant called her supervisor, J.V., to request assistance. She claimed to have informed J.V. about what happened, and was told there was no one to assist her and to keep calling back. At approximately 3:30 p.m. J.V. and another supervisor met appellant at her route to drop off a relay bag. Appellant indicated that she explained what happened, but was never asked if she required medical attention. She stated that she was told to keep calling the employing establishment to determine if any other carriers had returned. Appellant indicated that she took her time and completed her route, but was unable to work the following day due to severe pain.

In a July 14, 2015 statement, D.K., customer services operations manager, explained that appellant had failed to file a claim at the time of the injury, although her manager had asked if she wished to file a claim. Appellant filed her claim almost two years later. D.K. also noted that appellant was cleared by her physician to return to full duty with no restrictions a few days after the incident in 2013. Furthermore, appellant worked overtime almost every day without incident until November 8, 2013, when she had another incident where she was inattentive and fell on a customer's steps. D.K. explained that between the time of the November 2013 accident and July 14, 2015, appellant never once mentioned having back pain.

In a July 21, 2015 statement, J.V., a supervisor, noted that on October 28, 2013 she received a call from appellant that her relays were missing from her relay box located on her route. J.V. located the missing relay bags in the employing establishment and proceeded to deliver them to appellant on her route. She explained that, when she arrived, appellant was sitting on steps at a residence and informed her that she needed to "sit for a few because she fell." J.V. indicated that she asked appellant if she was okay and also where she had fallen. Appellant reportedly stated that she had fallen at a residence on Ocean Avenue. She also reportedly told J.V. that she did not require medical attention and was okay to finish her route, but would just need extra time. J.V. stated that she told appellant to continue calling the employing establishment so they could monitor her progress and not to hesitate to call if she felt any worse and could not complete the assignment. Appellant reportedly replied "Okay," and she proceeded to complete her assignment. J.V. indicated that after returning to work, appellant never informed her that her back was hurting as a result of her October 28, 2013 fall.

In another July 21, 2015 statement, N.J., also a supervisor, corroborated much of what J.V. noted in her statement. She indicated that she accompanied J.V. on October 28, 2013 to deliver appellant's missing relay bags. N.J. similarly noted that appellant informed them she had fallen at a residence on Ocean Avenue. Appellant reportedly declined medical attention and advised that all she needed was extra time to complete her assignment.

In a separate undated statement, appellant noted that it had been brought to her attention that J.V. and N.J. stated that she had been offered medical attention on October 28, 2013, but refused. She indicated that she returned to work after the accident because she felt she could work, but it was not until later that she found out how seriously she had been injured. Appellant also indicated that she was never offered medical attention and was told to continue her route and

to keep calling in. She explained that she had no reason to lie about what took place on October 28, 2013.

By letter dated August 3, 2015, OWCP advised appellant that additional evidence was needed to establish her claim. It particularly asked her to explain the specific tasks she believed caused her injury and how the injury occurred. OWCP also indicated that there was no medical evidence to support her claim.

In an August 7, 2015 response, appellant noted that on October 28, 2013 she was entering a building on Ocean Avenue. She explained that there were two or three steps entering the building and she proceeded to pull the cart up the stairs and instantly a sharp pain shot down her back and she had to pause for a minute because the pain was so strong. Appellant related that she proceeded to pull the cart up the rest of the steps and she continued to deliver the mail while taking her time. She noted that she never indicated that she fell down the stairs and she was never offered medical attention. Instead, appellant explained that she was advised to continue working and to call the employing establishment to check in.

Appellant believed that N.J. and J.V. had confused her current allegation with her subsequent November 8, 2013 incident, which was when she had fallen down stairs with the earlier October 28, 2013 incident. Appellant explained that she was told not to leave the cart outside and that the cart must always be where she could see it. She explained that her injury did not occur due a fall, but rather it occurred due to pulling her cart up the steps at a building on Ocean Avenue, when a sharp pain instantly shot down her back, causing her to have instant pain in her back. Regarding a delay in reporting, appellant indicated that, after she returned to work on October 28, 2013, D.K. called her into his office and asked her what had happened. She noted that she was advised to write it down on a "0-13/buck slip," which was used for employing establishment communications. Appellant also explained that she had just started the job in July 2013 and she had no knowledge of a Form CA-1, so she believed her accident had been reported. She advised that after inquiring about her claim after she returned from a 16-month absence, she found out that no Form CA-1 had been filed, just a report of injury.

Appellant also confirmed that the only other injury she sustained was on November 8, 2013, when she fell down the stairs delivering mail. She indicated that a supervisor and two carriers were on the scene, and she was taken away by ambulance. Furthermore, a claim was filed for that incident, OWCP File No. xxxxxx800. She denied any prior disabilities and explained that the fall caused her condition to worsen. Appellant indicated that D.K., N.J., and J.V. provided false statements when they indicated that she fell down the stairs on October 28, 2013. She also explained that she never mentioned falling down the stairs on that date.

Appellant explained that as a carrier's assistant, she worked six days a week, for up to 10 hours per day. She provided a photograph of a mailbag and denied that she was required to lift packages up to 70 pounds. Appellant indicated that was a requirement for truck drivers. She also denied that she was aware of filing claims and indicated that the only thing she was told to do was to write what happened on an official employing establishment communication form. She denied being informed of a Form CA-1 by management. Appellant also noted that while she was cleared for work, her physician indicated that she had a possible sprain. However, her

physician was not a surgeon or specialist in neurosurgery. Appellant alleged that she was being punished by management for reaching out to a higher authority. She requested compensation for her injury and noted that she was in constant pain on a daily basis.

OWCP received July 1 and 7, 2014 medical reports from Dr. Leonid Chernyak, Board-certified in anesthesiology and pain medicine, who noted that appellant developed lower back pain as a result of a work-related injury on November 8, 2013, when she slipped and fell down stairs while delivering mail. Dr. Chernyak examined appellant and diagnosed lumbosacral neuritis/radiculopathy and lumbar disc displacement.

A July 10, 2014 lumbar spine magnetic resonance imaging (MRI) scan revealed disc bulges at L3-4 and L4-5, as well as a large left-sided disc herniation at L5-S1, with neural impingement.

In a July 10, 2014 report, Dr. Erich G. Anderer, a Board-certified neurosurgeon, noted that appellant was status post fall in November 2013 after which she had intermittent pain down the leg, primarily in her ankle. He determined that she had received treatment on and off for symptoms that were largely controlled, although in the past few months they were recurrent. Dr. Anderer examined appellant and explained that she had a long standing history of intermittent left lower extremity radiculopathy, which was increasingly severe and refractory to nonsurgical therapy. He diagnosed concordant L5-S1 disc herniation and recommended a left L5-S1 microdiscectomy.

On July 22, 2014 Dr. Anderer performed a left L5-S1 microdiscectomy. In an August 21, 2014 follow-up report, he noted that appellant was making good progress following surgery.

In a September 4, 2015 decision, OWCP found that appellant established that the October 28, 2013 incident occurred as alleged, but denied her traumatic injury claim because the medical evidence did not contain a diagnosis in connection with the October 28, 2013 employment incident. Consequently, it denied appellant's claim for failing to satisfy the medical component of fact of injury.

Appellant timely requested a review of the written record before a representative of OWCP's Branch of Hearings and Review.

OWCP received treatment records from Dr. John Munyak, Board-certified in emergency medicine. The records cover treatment received on multiple occasions between January 8, 2014 and September 17, 2015. In his initial January 8, 2014 report, Dr. Munyak advised that appellant was status post injury at work on November 8, 2013 while delivering mail in the dark. She was going down some steps and missed a step. Appellant twisted her left foot and landed on the right knee and was unable to stand at that point. Dr. Munyak treated appellant for her left ankle and right knee conditions. In his February 12, 2014 follow-up treatment notes, he indicated that appellant's right knee pain was a little bit worse after a slip and fall injury at work.

During a May 14, 2014 follow-up visit, Dr. Munyak noted that appellant had three days of entire posterior left lower extremity pain radiating from the back. Appellant reportedly stated that this was from the "primary injury," which had previously resolved but had since returned. He explained that appellant explained that she had not mentioned it earlier because it just went

away at the date of injury. Dr. Munyak reported that it was definitely a new development due to appellant's favoring the way she was walking with the right knee. On June 18, 2014 appellant continued to complain of lower back pain radiating down her left lower extremity. Dr. Munyak reiterated that appellant stated that she had this with the primary injury, which had resolved but had since returned. He commented "so it is definitely related to the work injury initially described." Dr. Munyak explained that the left lower extremity was having sciatic-type symptoms due to appellant's favoring the right knee.

Appellant returned to see Dr. Munyak following her July 2014 lumbar surgery. In August 27, 2014 treatment notes, Dr. Munyak reported that her back pain decreased following surgery, as well as her left lower extremity radiculopathy. However, appellant's right knee was still giving way. When she returned on October 17, 2014, appellant reported three days of left lower extremity radiculopathy, posterior all the way to her foot. Dr. Munyak commented that there was no specific injury/incident to cause this pain now after surgery. He further noted that the pain goes up in the thoracolumbar spine as well, which it had not done before. Appellant continued to complain of low back and/or left lower extremity radiculopathy during follow-up visits on November 10 and December 5, 2014. In the November 10, 2014 notes, Dr. Munyak reiterated that appellant had "pain radiating down the lower extremity on the initial day at the fall at work, but since it resolved later that day, she did not mention it to anyone until all of a sudden it kicked in again with favoring her right knee and left ankle injury...."

On March 31, 2015 Dr. Munyak reported ongoing low back and right knee pain, with painful range of motion in both areas. He referred appellant for pain management. When appellant returned for follow-up on June 5, 2015 there was no mention of back pain, just persistent right knee pain. On August 26, 2015 she again complained of right knee and low back pain, with painful low back range of motion.

In his September 17, 2015 follow-up treatment notes, Dr. Munyak noted that appellant had a pain management appointment in a week for her persistent and worsening lower back and right knee pain due to a work-related right knee injury. He also noted that appellant had fallen in a bathroom on July 20, 2015 "because her knee locked up and [had] been worsening since the work-related injury when she fell." Dr. Munyak opined that appellant's back and knee complaints directly resulted from her work-related injury.

By decision dated February 10, 2016, an OWCP hearing representative affirmed, as modified, the September 4, 2015 decision. She reversed with the claims examiner's initial finding that appellant established that the October 28, 2013 incident occurred as alleged. The hearing representative found that the evidence did not demonstrate that a specific event, incident, or exposure occurred at the time, place, and in the manner alleged.

LEGAL PRECEDENT

A claimant seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial

² *Id.*

evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.³

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁴ The second component is whether the employment incident caused a personal injury.⁵ An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.⁶

ANALYSIS

On her July 14, 2015 Form CA-1, appellant indicated that she injured her back on October 28, 2013 while pulling her mail cart into a building located on Ocean Avenue. In a separate statement, appellant indicated there were two steps at the entrance to the building, and when she tried to pull the cart up the stairs it was too heavy, so she left the cart in front of the building and proceeded to deliver the mail. An hour later (1:30 p.m.), appellant reportedly began to experience neck, right arm, and back pain. She slowed down a little to ease the pain, and around 2:30 p.m. appellant called her supervisor to request assistance. The employing establishment controverted the claim because appellant waited almost two years before filing her Form CA-1 and because she had not previously mentioned having back pain.

In the July 14, 2015 statement, D.K., the customer services operations manager, noted that appellant failed to file a claim at the time of injury “although [her] manager asked if she wished to file a claim.” D.K. further noted that appellant had been cleared by her physician to return to full duty with no restrictions a few days after her accident in 2013. Appellant reportedly worked overtime almost every day without incident until November 8, 2013 when she fell on a customer’s steps. This latter incident was the subject of a separate traumatic injury claim (OWCP File No. xxxxxx800), which is not currently before the Board.⁷

³ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁴ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician’s opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician’s opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant’s specific employment factor(s). *Id.*

⁶ *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

⁷ The November 8, 2013 traumatic injury claim was accepted for left ankle and right knee sprains.

In the July 21, 2015 statement, appellant's supervisor, J.V., recalled having met appellant along her route on October 28, 2013. Appellant had reportedly called in to advise that some relay bags were missing. J.V. found the missing relay bags and delivered them to appellant. When she arrived, appellant was sitting on some steps because she had reportedly fallen at the building, which was located at the beginning of appellant's route. J.V. stated that appellant declined medical attention at the time and advised that she just needed extra time to finish her assignment because she was moving slower. J.V. further stated that after returning to work appellant never informed her that her back was hurting as a result of her "fall on [October 28, 2013]." In her July 21, 2015 statement, J.V. did not mention appellant's subsequent November 8, 2013 work-related fall.⁸

When questioned by OWCP about whether she was injured pulling a mail cart or whether she had fallen on October 28, 2013, appellant stated on August 7, 2015 that she never told J.V. or N.J. that she had fallen. Appellant further stated that both supervisors arrived on the scene because of missing relay bags and that she informed them she had injured her back pulling up the mail cart. She indicated that they were either lying or had confused the October 28, 2013 incident with the details of her November 8, 2013 work-related fall. Appellant reiterated that she injured her back on October 28, 2013 pulling the mail cart up two to three steps entering the building located on Ocean Avenue.

In its September 4, 2015 decision, OWCP found appellant's response to its questionnaire, in conjunction with her previously submitted personal statement(s), sufficient to establish the factual portion of her claim. Accordingly, it found that the record supported that the October 28, 2013 injury and/or event(s) occurred as alleged. However, in a February 10, 2016 decision, the hearing representative subsequently reversed.

The Board finds that the district office's initial determination that appellant established the factual component of her traumatic injury claim was correct. There is no dispute that appellant contemporaneously reported having been injured on October 28, 2013 at a building on Ocean Avenue while performing her assigned duties. There is a question as to whether the incident involved pulling her mail cart or an undescribed fall. Appellant specifically denied having told anyone she had fallen on October 28, 2013. She plausibly explained that J.V. and/or N.J. perhaps confused the October 28, 2013 employment incident with her November 8, 2013 work-related fall.⁹

The Board finds that the record supports that on October 28, 2013 at approximately 12:30 p.m., appellant experienced discomfort while maneuvering her mail cart at the entrance of a building located on Ocean Avenue, Brooklyn, N.Y. The Board further finds that although appellant established the factual component of her traumatic injury claim, she has failed to meet

⁸ Another supervisor, N.J., accompanied J.V. when she met appellant on October 28, 2013 along her delivery route. N.J. similarly stated that appellant claimed to have fallen, that she declined medical attention, and merely requested extra time to complete her assignment. N.J. also did not comment or otherwise reference appellant's November 8, 2013 work-related fall.

⁹ The Board notes that while D.K. mentioned the subsequent November 8, 2013 incident in his July 14, 2015 statement, neither J.V. nor N.J. mentioned appellant's November 8, 2013 fall in their respective July 21, 2015 statements.

her burden of proof to establish an injury in connection with the October 28, 2013 employment incident.

The current record does not include any contemporaneous medical evidence with respect to the October 28, 2013 employment incident. The earliest medical evidence of record was Dr. Munyak's January 8, 2014 report of appellant's initial visit following a November 8, 2013 work-related fall. He reported that appellant was delivering mail in the dark when she missed a step, twisted her left foot, and landed on her right knee. At the time, Dr. Munyak made no mention of a then-current or prior low back injury. He first reported low back and/or left lower extremity sciatic-type symptoms on May 15, 2014, which at the time appellant related to her "primary injury" (November 8, 2013). Dr. Munyak would later explain that appellant did not initially report her back complaints because they resolved soon after the work-related injury. He continued to treat appellant for her low back, left lower extremity radiculopathy, and right knee complaints through September 17, 2015. None of Dr. Munyak's treatment notes specifically referenced the October 28, 2013 employment incident.

Dr. Chernyak examined appellant on July 1, 2014 and again on July 7, 2014. In both reports he noted that appellant developed lower back pain as a result of a November 8, 2013 work-related injury when she slipped and fell down the stairs while delivering mail. Dr. Chernyak diagnosed lumbosacral neuritis/radiculopathy and lumbar disc displacement. He did not mention an October 28, 2013 employment incident in relation to appellant's diagnosed lumbar condition.

Dr. Anderer initially examined appellant on July 10, 2014, and he reviewed the results of a recent lumbar MRI scan. He described appellant as status post fall in November 2013 after which she began having intermittent pain down the left leg, primarily in her ankle. Dr. Anderer diagnosed L5-S1 disc herniation and recommended surgery, which he subsequently performed on July 22, 2014. In his August 21, 2014 report, Dr. Anderer indicated that appellant was making good progress following her recent L5-S1 microdiscectomy. None of the above-referenced reports from Dr. Anderer mentioned an October 28, 2013 employment incident as a possible cause of appellant's lumbar condition.

Because the medical evidence of record either does not mention the October 28, 2013 employment or it specifically relates appellant's lumbar and left lower extremity complaints to a November 8, 2013 work-related fall. Appellant has failed to meet her burden of proof.

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 established that the October 28, 2013 employment incident occurred as alleged. Accordingly, the hearing representative's February 10, 2016 decision is modified to reflect this finding. However, appellant failed to meet her burden of proof to establish an injury in connection with the accepted October 28, 2013 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2016 decision of the Office of Workers' Compensation Programs is affirmed, as modified.

Issued: December 6, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board