



delivering mail and fell down climbing a four foot tall snowdrift. He experienced pain in his leg and thigh but did not stop working. On the reverse side of the form, appellant's supervisor stated that he failed to give any notice of his injury until he filed his claim on June 18, 2011. She noted that he stopped work on April 21, 2011. The employing establishment controverted the claim.

By letter dated June 5, 2011, appellant stated that on February 3, 2011 he was carrying mail on his route. A big snowstorm left snowdrifts as high as four to five feet tall and the only way to cross the street was by climbing over snowdrifts. At approximately 1:00 to 1:30 p.m., he attempted to cross over a snowdrift and fell down, causing his mail to go everywhere. After he gathered his mail and stood up, appellant noticed pain in his leg and thigh, but not enough to stop working. He did not work that weekend, returned to work the following week and worked for the next two weeks with leg pain. The pain persisted and appellant sought medical treatment on February 22, 2011. He continued to work and when the pain worsened, he visited his physician who referred him to an orthopedic surgeon. Diagnostic testing was performed and appellant underwent posterior spinal fusion surgery on May 19, 2011.

In an April 27, 2011 note, Dr. Steven D. Levin, a Board-certified orthopedic surgeon, reported that appellant was under his care and taken off work until further notice.

A May 16, 2011 report noted that an L3-4, L4-5 posterior spinal fusion was scheduled for May 19, 2011 by Dr. Eldin Karaikovic, a Board-certified orthopedic surgeon. In a June 27, 2011 attending physician's report (Form CA-20), Dr. Karaikovic reported that appellant complained of left leg weakness and pain. In January 2011, he slipped and fell in snow during work and did not seek treatment until his symptoms worsened. Dr. Karaikovic noted L4-5 degenerative disc disease and severe foraminal stenosis at L3-4, L4-5 causing weakness in the left quad muscles. He diagnosed degenerative disc disease, foraminal stenosis, weakness of the leg and checked a box marked "yes" that appellant's condition was caused or aggravated by his employment activity. Dr. Karaikovic also checked the box marked "no" when asked if appellant had any history of preexisting disease or impairment. Appellant underwent L3-5 decompression and posterior lateral fusion with screws, plates and rods on May 19, 2011. Dr. Karaikovic concluded that appellant was to remain out of work from four to six months after surgery.

By letter dated July 11, 2011, OWCP informed appellant that the evidence of record was insufficient to support his claim. Appellant was advised of the medical and factual evidence needed and was asked to respond to the questions provided in the letter within 30 days.

By decision dated August 15, 2011, OWCP denied appellant's claim finding that the evidence was insufficient to establish that he sustained an injury. It found that the February 3, 2011 incident occurred as alleged; however, the medical evidence was not sufficient to establish causal relation.

By letter dated August 29, 2011, appellant requested reconsideration. He did not seek treatment immediately after the February 3, 2011 employment incident because he thought that his injury would resolve on its own. When his leg pain worsened, appellant was forced to use a cane and stopped work. After seeking medical attention, he underwent surgery for his back condition which he believed was caused by the February 3, 2011 fall.

In support of his claim, appellant submitted return to work notes dated September 2 and October 4, 2011 from Dr. Karaikovic who stated that appellant was receiving treatment for spinal fusion and could not return to work until further notice.

By decision dated November 9, 2011, OWCP denied appellant's request for reconsideration finding that he did not raise a substantive legal question or submit new and relevant evidence.

By letter dated September 25, 2012, appellant, through counsel, requested reconsideration. In a May 10, 2012 report, Dr. Karaikovic noted that he had treated appellant since May 2, 2011. He was initially seen by Dr. Levin, who referred him for evaluation of the lumbar spine. Dr. Karaikovic reported that in January 2011 while working as a mailman, appellant slipped and fell into a very deep pile of snow. He ignored his leg pain and continued to work until March 22, 2011, when it became excruciating. Appellant worked until about mid-April 2011. X-rays of the lumbosacral spine were obtained that showed disc space narrowing between the L3-4, L4-5 and L5-V1 vertebrae, loss of normal lumbar lordosis and a minimal Grade 1 degenerative L3-4 spondylolisthesis without spondylosis, indicating a degenerative disc disease and degenerative changes in the lumbosacral spine. The April 22, 2012 x-rays of the left hip and knee showed mild degenerative joint disease. An April 28, 2011 magnetic resonance imaging (MRI) scan of the lumbosacral spine showed marked degenerative changes mostly at the L4-5 disc. Marked bilateral foraminal stenosis was present at the L3-4 and L4-5 levels and the foraminal and far lateral disc protrusion on the left at L3-4 was found as well. An April 26, 2011 MRI scan of the cervical spine showed mild degenerative disease of the cervical spine without central stenosis or neural foraminal narrowing. An April 25, 2011 MRI scan of the left knee revealed diffuse Grade 2 chondromalacia along the undersurface of the patella and no evidence of an acute ligamentous or meniscal injury.

Dr. Karaikovic diagnosed multilevel degenerative disc disease of the lumbar spine (L3-4 and L4-5) and severe foraminal stenosis L3-4 and L4-5 causing a subacute onset of severe pain in the left thigh and weakness in the left psoas and quadriceps muscle. Appellant underwent L3-L5 posterior spinal fusion with interbody fusion and decompression on May 19, 2011. He underwent extensive physical therapy and by July 1, 2011 core muscle strengthening was almost completely harmful. Appellant started complaining of pain in January 2012 and an MRI scan of the pelvis and left hip showed severe avascular necrosis of the femoral head of both hips. He underwent a left total hip arthroplasty on March 21, 2012.

Dr. Karaikovic stated that appellant's current diagnosis was status post L3-5 posterior spinal fusion and decompression and status post left total hip arthroplasty. Appellant's lumbar spine condition was permanent but did not require further treatment. Dr. Karaikovic noted that, because appellant denied any lower back and leg pain prior to the accident at work in January 2011, it was probable that his left leg symptoms were caused by the accident. He stated: "Although his lower back condition is degenerative in nature and therefore a result of wear and tear, an accident (a fall) aggravated the condition (foraminal stenosis) causing development of in the first place pain, and then atrophy and weakness in the left anterior thigh (psoas and quadriceps muscles)." Dr. Karaikovic concluded that, based on the history and appellant's statement that his symptoms started after a particular event at work, his condition was probably at least aggravated, if not started, with the accident that occurred at work.

By decision dated December 31, 2012, OWCP denied appellant's claim, as modified, finding that the evidence of record failed to establish that his accepted injury was causally related to the February 3, 2011 employment incident.

### **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; that an injury was sustained while in the performance of duty as alleged and that any disability or specific condition for which compensation is claimed are 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 on 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> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.<sup>5</sup> Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.<sup>6</sup>

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 his or her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

<sup>6</sup> *Supra* note 4.

the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>7</sup>

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>8</sup> The opinion of the physician must be based on one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### ANALYSIS

OWCP accepted that the February 3, 2011 employment incident occurred as alleged and that appellant fell on a snowbank while on his route. The issue is whether appellant established that the incident caused his back or left hip conditions. The Board finds that he did not submit sufficient medical evidence to support that his back or left leg conditions are causally related to the February 3, 2011 employment incident.<sup>10</sup>

In a May 10, 2012 medical report, Dr. Karaikovic reported that he first treated appellant on May 2, 2011 after a referral from Dr. Levin. He listed a history that in January 2011, while working as a mailman, appellant slipped and fell into a very deep pile of snow but continued working. The pain increased gradually and became excruciating on March 22, 2011. Diagnostic testing of the lumbosacral spine showed disc space narrowing between L3-4, L4-5 and L5-V1 vertebrae, loss of normal lumbar lordosis and minimal Grade 1 degenerative L3-4 spondylolisthesis without spondylosis, indicating a degenerative disc disease and degenerative changes in the lumbosacral spine. The April 22, 2012 x-ray of the left hip and knee showed a mild degenerative joint disease. An April 28, 2011 MRI scan of the lumbosacral spine showed marked degenerative changes mostly at the L4-5 disc.

Dr. Karaikovic diagnosed multilevel degenerative disc disease of the lumbar spine and severe foraminal stenosis at L3-4 and L4-5, causing a subacute onset of severe pain in the left thigh and weakness in the left psoas and quadriceps muscle, for which appellant underwent surgery on May 19, 2011. He noted that appellant had extensive physical therapy with improved left leg strength and sensation. In January 2012, an MRI scan of the pelvis and left hip showed severe avascular necrosis of the femoral head of both hips and appellant underwent left total hip arthroplasty on March 21, 2012.

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<sup>7</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>8</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>9</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>10</sup> *See Robert Broome*, 55 ECAB 339 (2004).

Dr. Karaikovic stated that appellant's current diagnosis was status post L3-5 posterior spinal fusion and decompression and status post left total hip arthroplasty. Because appellant denied any lower back and leg pain prior to the accident at work in January 2011, it was probable that his left leg symptoms were caused by the accident. His lower back condition was degenerative in nature and the result of wear and tear; but the physician noted an accident, such as a fall, aggravated the foraminal stenosis condition causing pain and then atrophy and weakness in the left anterior thigh (psoas and quadriceps muscles). Based on the history and appellant's statement that his symptoms started after a particular event at work, his condition was probably at least aggravated, if not started, with the accident that occurred at work.

The Board finds that the opinion of Dr. Karaikovic is not well rationalized. Dr. Karaikovic's report addresses multiple diagnoses, including multilevel degenerative disc disease of the lumbar spine, severe foraminal stenosis at L3-4 and L4-5 causing a subacute onset of severe pain in the left thigh and weakness in the left psoas and quadriceps muscle and severe avascular necrosis of the femoral head of both hips. He failed, however, to adequately explain how the accepted incident caused appellant's injuries, other than offering a generalized opinion that the accident aggravated his preexisting foraminal stenosis condition as appellant denied any prior low back or leg pain. Dr. Karaikovic also listed an erroneous date of injury as occurring in January 2011 rather than on February 3, 2011. He did not address the February 3, 2011 employment incident, as he stated that appellant sustained his injury in January 2011 after falling in snow. Dr. Karaikovic's June 27, 2011 Form CA-20 also referenced a January 2011 work incident. As such, his opinion is not based on an accurate factual history. Dr. Karaikovic's statement that appellant suffered an injury at work is equivocal in nature and of limited probative value.<sup>11</sup>

Dr. Karaikovic failed to provide an adequate and detailed medical history. He indicated that appellant's lower back condition was degenerative in nature and therefore a result of wear and tear. While Dr. Karaikovic provided detailed review of diagnostic reports, x-rays and the MRI scan, the studies were not obtained until April 22, 2011, more than two months after the February 3, 2011 employment incident. Dr. Karaikovic failed to provide any other details regarding appellant's medical history and stated that his opinion on causal relationship was based on the fact that there were no prior complaints or injuries. As noted, Dr. Karaikovic made no mention of the February 3, 2011 employment incident and referenced a January 2011 incident where appellant fell in snow. He stated that appellant's symptoms started after a particular event at work and his condition was probably at least aggravated, if not started with the accident that occurred at work. This statement is equivocal and fails to adequately address the issue of causal relation.

With respect to appellant's leg, knee and hip injuries, Dr. Karaikovic opined that it was probable that appellant's left leg symptoms were caused by the accident. He noted that the fall probably aggravated his foraminal stenosis which caused the development of pain and then atrophy and weakness in the left anterior thigh and psoas and quadriceps muscles. As noted, the Board finds his opinion to be speculative and equivocal in nature. The April 22, 2012 x-rays of the left hip and knee showed a mild degenerative joint disease, indicating a preexisting condition.

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<sup>11</sup> S.W., Docket No. 08-2538 (issued May 21, 2009).

The MRI scan of appellant's hip and pelvis was not obtained until after January 2012 and revealed severe avascular necrosis of the femoral head of both hips, almost one year after the February 3, 2011 employment incident. Dr. Karaikovic provided no opinion regarding the cause of appellant's leg, knee and hip injuries.

The Board notes that Dr. Karaikovic did not evaluate appellant until three months after the February 3, 2011 employment incident. Dr. Karaikovic's history of the "January 2011" employment incident merely repeated appellant's factual assertions. He noted no additional details about the mechanism of the alleged injury, failed to address appellant's prior medical history and did not explain how the accepted February 3, 2011 incident caused or contributed to his multiple injuries. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>12</sup> The opinion of a physician supporting causal relationship must rest on a complete factual and medical background supported by affirmative evidence, address the specific factual and medical evidence of record and provide medical rationale explaining the relationship between the diagnosed condition and the established incident or factor of employment.<sup>13</sup> Dr. Karaikovic's report is insufficient to meet appellant's burden of proof.<sup>14</sup>

The remaining medical evidence of record is also insufficient to establish a causal relationship between appellant's February 3, 2011 employment incident and his diagnosed conditions. Dr. Karaikovic's June 27, 2011 Form CA-17 and Form CA-20 are duplicative of information provided in his May 10, 2012 report the return to work notes from Dr. Levin and Dr. Karaikovic fail to state any opinion on causal relationship and are of limited probative value.<sup>15</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

### **CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that the February 3, 2011 employment incident caused his back or left leg conditions.

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<sup>12</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>13</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>14</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>15</sup> *S.E.*, Docket No. 08-2214 (issued May 6, 2009); *C.B.*, Docket No. 09-2027 (issued May 12, 2010).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 31, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 21, 2013  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

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