

**United States Department of Labor  
Employees' Compensation Appeals Board**

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C.B., Appellant )

and )

U.S. POSTAL SERVICE, POST OFFICE, )  
Harrisburg, VA, Employer )

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**Docket No. 12-1488  
Issued: December 17, 2012**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

COLLEEN DUFFY KIKO, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On July 3, 2012 appellant filed a timely appeal from a June 22, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on May 7, 2012.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its June 22, 2012 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

## **FACTUAL HISTORY**

On May 8, 2012 appellant, then a 60-year-old sales and distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on May 7, 2012 she sustained a sprain to the right elbow when she was pushing an all purpose container (APO). She felt her right elbow pop, causing pain to shoot up and down her arm and near her ribs. Appellant notified her supervisor on May 8, 2012 and first received medical care on May 9, 2012. The employing establishment controverted the claim.

In a May 9, 2012 diagnostic report, Dr. Gary Schwartz, Board-certified in family medicine, advised that an x-ray of appellant's ribs showed a minimal to nondisplaced right sixth rib fracture. In a May 9, 2012 return to work note, he restricted appellant from lifting over 10 pounds due to her fractured rib and stated that she was excused from work until May 14, 2012.

By letter dated May 16, 2012, OWCP informed appellant that the evidence of record was insufficient to establish her 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 letter dated June 7, 2012, the employing establishment controverted the claim stating that appellant began work on March 10, 2012 and sustained an alleged injury within two months of her start date. It stated that her position consisted of casing mail and preparing dispatch of outgoing mail, noting that she had been working this position without any issues.

By letter dated June 21, 2012, appellant stated that she sustained a right elbow, right side and left wrist injury on May 7, 2012 when she was pushing an APC and felt a pop in her side. She stated that her supervisor saw her cry out in pain when the incident happened, resulting in a broken rib.

In a May 9, 2012 report, Dr. Stacy J. Castaldi, a Board-certified diagnostic radiologist, listed a history that appellant had lateral right rib pain for the prior three months. X-rays of the ribs revealed minimal to nondisplaced right sixth rib fracture. Dr. Castaldi also suspected small right pleural effusion. She further noted degenerative changes in the spine and anterior wedging of the lower thoracic vertebra.

In a May 9, 2012 x-ray of the right elbow, Dr. Castaldi reported that appellant complained of elbow pain with a possible injury two weeks prior. She noted possible degenerative changes in the lateral epicondylar region and stated that an injury was difficult to exclude.

In a May 9, 2012 medical report, Dr. Schwartz reported that appellant had been working for the postal service for the previous two months, six days a week. Appellant's job entailed sorting mail and lifting, sometimes having to lift up to 70 pounds. She complained of pain in the right upper arm, right elbow, right rib cage and left neck for several weeks, much worse in the last two days. Upon physical examination, Dr. Schwartz noted that appellant's right elbow could not fully extend but did not seem full or swollen and there was tenderness of the right axillary ribs. He diagnosed localized joint pain in the elbow, sprained ribs, ganglion of the left wrist, neck pain and pain in the hands.

By decision dated June 22, 2012, OWCP denied appellant's claim finding that the evidence of record failed to establish that her diagnosed medical condition was causally related to the accepted May 7, 2012 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>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or occupational disease.<sup>4</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>5</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>6</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>7</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>3</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>4</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>5</sup> *Elaine Pendleton*, *supra* note 3.

<sup>6</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>7</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>8</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>9</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>10</sup>

### ANALYSIS

OWCP accepted that the May 7, 2012 employment incident occurred as alleged. The issue is whether appellant established that the incident caused her elbow, ribs, wrist, hand and neck injuries. The Board finds that she did not submit sufficient medical evidence to support that her injuries are causally related to the May 7, 2012 employment incident.<sup>11</sup>

In a May 9, 2012 diagnostic report, Dr. Castaldi reported that appellant had a three-month history of lateral right rib pain. X-rays of the ribs revealed a minimal to nondisplaced right sixth rib fracture. In a May 9, 2012 x-ray of the right elbow, Dr. Castaldi stated that appellant complained of elbow pain with a possible injury two weeks prior. She noted possible degenerative changes in the lateral epicondylar region and stated that an injury was difficult to exclude. This reflects that appellant's claimed condition arose prior to the incident accepted by OWCP.

While Dr. Castaldi provided a diagnosis of displaced right sixth rib fracture, she did not address how the accepted May 7, 2012 employment incident caused or contributed to any injury. With respect to the right elbow, she failed to provide a firm medical diagnosis, noting that the x-ray revealed possible degenerative changes in the lateral epicondylar region and that an injury was difficult to exclude. The record is insufficient to establish a causal connection because Dr. Castaldi has not identified a medical condition pertaining to the right elbow. She reported a history of lateral right rib pain of three months' duration and a possible elbow injury. This implies that appellant's rib fracture and any right elbow injury were preexisting conditions caused by a nonoccupational event rather than the May 7, 2012 employment incident. The Board has held that medical evidence that does not offer any opinion regarding the cause of an

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<sup>8</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>10</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>11</sup> *See Robert Broome*, 55 ECAB 339 (2004).

employee's condition is of limited probative value on the issue of causal relationship.<sup>12</sup> Dr. Castaldi's reports are insufficient to meet appellant's burden of proof.

In a May 9, 2012 medical report, Dr. Schwartz reported that appellant had been working for the postal service for two months, six days a week. He noted that her job entailed sorting mail and lifting, sometimes having to lift up to 70 pounds. Appellant complained of pain in the right upper arm, right elbow, right rib cage and left neck for several weeks. Dr. Schwartz diagnosed right sixth rib fracture, localized joint pain in the elbow, ganglion of the left wrist, neck pain and pain in the hands. The Board finds that his opinion is not well rationalized. While Dr. Schwartz diagnosed appellant's right sixth rib fracture, he did not provide a firm medical diagnosis pertaining to appellant's other alleged conditions as pain is a description of a symptom rather than a clear diagnosis of a medical condition.<sup>13</sup> He provided a general description of appellant's job duties which included sorting mail and lifting but failed to make any mention of the May 7, 2012 employment incident. Dr. Schwartz did not determine that appellant's condition was work related and did not offer a rationalized opinion on how the accepted May 7, 2012 employment incident caused or contributed to any injury.<sup>14</sup> His report also notes that appellant had been complaining of pain in the right upper arm, right elbow, right rib cage and left neck for several weeks, much worse in the last two days. However, Dr. Schwartz failed to provide a detailed medical history or explain whether any of these conditions were preexisting. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>15</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>16</sup> Without medical reasoning explaining how the accepted May 7, 2012 employment incident caused appellant's right sixth rib fracture and other alleged injuries, Dr. Schwartz's report is not sufficient to meet appellant's burden of proof.<sup>17</sup>

Evidence submitted by appellant after the final decision cannot be considered by the Board. As previously noted, the Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its decision.<sup>18</sup> Appellant may submit additional evidence,

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

<sup>13</sup> The Board has consistently held that pain is a symptom, rather than a compensable medical diagnosis. *C.F.*, Docket No. 08-1102 (issued October 10, 2008).

<sup>14</sup> *Franklin D. Haislah*, 52 ECAB 457 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value); *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>15</sup> *Supra* note 12.

<sup>16</sup> *See Lee R. Haywood*, 48 ECAB 145 (1996).

<sup>17</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008).

<sup>18</sup> 20 C.F.R. § 501.2(c)(1).

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 her burden of proof to establish that her rib fracture and other injuries are causally related to the May 7, 2012 employment incident, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 22, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 17, 2012  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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

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