

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

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**J.S., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Blairsville, GA, Employer**

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**Docket No. 07-1906  
Issued: January 23, 2008**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
DAVID S. GERSON, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On April 16, 2007 appellant filed a timely appeal from a November 6, 2006 decision of the Office of Workers' Compensation Programs that denied her traumatic injury claim.<sup>1</sup> Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

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<sup>1</sup> Appellant also requested review of a March 14, 2007 Office decision that denied her request for reconsideration without conducting a merit review. This decision, however, is null and void as the Board and the Office may not simultaneously have jurisdiction over the same issue. On December 7, 2006 appellant filed a timely request for review by the Board. The appeal was docketed as number 07-447. By correspondence dated February 27, 2007, appellant requested that the Board dismiss her appeal so that she might submit additional evidence to the Office with a request for reconsideration. The Board's order dismissing appellant's appeal was issued on April 30, 2007. At the time the Office issued its March 14, 2007 decision denying appellant's request for reconsideration, appeal number 07-445 was still pending. The Board dismissed appellant's appeal on April 30, 2007. As the Board still retained jurisdiction over appellant's appeal, the Office could not issue a decision on appellant's request for reconsideration as this pertained to the same issue that was before the Board in appeal number 07-445. See *Terry L. Smith*, 51 ECAB 182 (1999); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

## ISSUE

The issue is whether appellant met her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

## FACTUAL HISTORY

On September 19, 2006 appellant, then a 53-year-old rural route carrier, filed a traumatic injury claim alleging that she pulled a muscle in her right arm and sustained bruises to her arms and legs when, on September 18, 2006 a motorcyclist lost control and struck her postal delivery vehicle. She stopped work on October 10, 2006.

On September 26, 2006 the Office requested additional information concerning appellant's claim. It advised appellant that it was crucial to her claim that she submit a physician's opinion explaining how the employment incident caused or aggravated the claimed injury.

By decision dated November 6, 2006, the Office denied appellant's claim on the grounds that there was no medical evidence establishing a causal relationship between the accepted employment incident and a diagnosed medical condition.<sup>2</sup>

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>3</sup> 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> Second, the

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<sup>2</sup> Following the Office's denial of the claim, appellant submitted a November 7, 2006 note, in addition to examination forms from Marilyn Williams, a nurse practitioner.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>8</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>9</sup> and must be one of reasonable medical certainty<sup>10</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>11</sup>

### ANALYSIS

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty. The evidence establishes that on September 18, 2006, a motorcycle struck appellant's postal vehicle. However, the Board finds that appellant has not submitted medical evidence supporting that the established employment incident caused a personal injury.

On September 26, 2006 the Office advised appellant that it was crucial to her claim that she submit a physician's opinion explaining how the employment incident caused or aggravated the claimed injury. However, the record does not reflect that, prior to the Office's November 6, 2006 decision appellant submitted medical evidence from a physician addressing how the September 18, 2006 work incident caused or aggravated appellant's claimed injury. As noted above, to meet her burden of proof, appellant must submit medical evidence establishing that the employment incident caused an injury.

Consequently, appellant has not met her burden of proof in establishing her claim because she has not submitted medical evidence from a physician which explains how the September 18, 2006 work incident caused or aggravated her claimed injury.<sup>12</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>10</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>11</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

<sup>12</sup> Following the Office's November 6, 2006 decision, appellant submitted a nurse's report. Also, on the present appeal before the Board, she submitted medical evidence from a physician. The Board, however, notes that it cannot consider this evidence for the first time on appeal because the Office did not consider this evidence in reaching a final decision. The Board's review is limited to the evidence in the case record at the time the Office made its final decision. 20 C.F.R. § 501.2(c). This decision of the Board does not preclude appellant from submitting additional evidence to the Office as part of a reconsideration request.

**CONCLUSION**

The Board finds that appellant did not meet her burden of proof in establishing that she sustained a traumatic injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2006 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 23, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

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