

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

### **FACTUAL HISTORY**

On January 13, 2010 appellant, then a 27-year-old distribution process worker, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2009 she sustained a neck and right shoulder injury after picking up a row of label tape while in the performance of duty.

By letter dated January 15, 2010, OWCP requested additional factual and medical information from appellant. It allotted her 30 days to submit additional evidence and respond to its inquiries.

In a December 24, 2009 emergency department medical report, Jody McCann, a physician's assistant, diagnosed right shoulder pain. She described the incident as right shoulder pain from repetitive lifting.

In a December 30, 2009 witness statement, Lynda A. Singer, a coworker, stated that she was working in the same area as appellant on December 24, 2009. She indicated that their duty was to re-label packages and the material came in a large box. Appellant was sitting behind Ms. Singer who heard a noise at 9:00 a.m. and turned around to see the large box and the material spilled out onto the floor. Ms. Singer saw appellant hold her neck but did not see if she had lifted or nudged the box before it fell over.

In another witness statement, a Matthew L. Hughart stated that on December 24, 2009 he witnessed appellant attempting to pick up a box to place it on an orange tote which then tipped over.

In a January 26, 2010 letter to appellant, the employing establishment informed her that the continuation of pay (COP) she had been receiving was limited to 45 days and would expire on February 7, 2010.

In a January 26, 2010 letter to OWCP, the employing establishment notified OWCP that it was looking for limited-duty work for appellant and requested completion of a work restriction evaluation form or a prognosis of when she would be able to return to work if she was unable to work at that time.

By decision dated February 22, 2010, OWCP denied appellant's claim on the basis that the factual and medical evidence submitted was insufficient to establish fact of injury. It found that evidence she submitted was not sufficient to establish that the described employment activities occurred as alleged and that there was no medical evidence that provided a diagnosis which could be connected to the claimed event.

In a January 8, 2010 medical report, Dr. Curtis A. Goltz, a Board-certified orthopedic surgeon, diagnosed neck strain and right shoulder strain. He noted that appellant stated that on December 24, 2009 she had to visit the emergency room for debilitating pain and spasm into her neck. In a January 29, 2010 progress report, Dr. Goltz diagnosed pain in right shoulder, orthopedic reason unknown. He explained that there were no objective findings that would suggest the cause of her pain. Dr. Goltz kept her out of work as she stated even the most routine daily living activities were debilitating and stated that he would see her following a functional capacity examination.

On March 15, 2010 appellant, through her attorney, requested an oral hearing and submitted additional evidence. In a March 5, 2010 medical report, Dr. Goltz diagnosed right shoulder pain. He stated that appellant indicated that she was sitting in a chair when it broke and she fell at work on September 4, 2009.<sup>2</sup> Dr. Goltz released her to limited duty on March 8, 2010 with restrictions on repetitive use of the right arm.

On March 19, 2010 appellant filed a claim for compensation (Form CA-7) for the period February 8 to March 5, 2010.

By letter dated March 22, 2010, OWCP acknowledged receipt of appellant's claim for compensation.

In a December 4, 2009 medical report, Ms. McCann diagnosed right shoulder pain. She indicated, among other things, that appellant had been undergoing physical therapy, was seeing a physician and returned to light duty. On December 24, 2009 appellant was doing light-duty, packaging and labeling, and was working herself a little bit too hard and started having severe pain and burning in her right shoulder and up into her neck area. She denied any recent falls or other trauma, she reported no new numbness or tingling, but did say she was having muscle spasms in her neck.

On June 15, 2010 a telephonic hearing was held before an OWCP hearing representative. Appellant testified that her limited duty consisted of handling label tape and labeling packages out of a large box which required repetitive use of her right arm. She testified that she informed her supervisor of her difficulty with the limited-duty job requirements who told her to take breaks when needed. On December 24, 2009 appellant testified that she saw a large box on the edge of a desk and attempted to prevent it from falling, when she reached for it with her left hand she had a roll of tape labels in her right hand and experienced severe pain in her right neck and shoulder.

By decision dated September 3, 2010, an OWCP hearing representative affirmed the February 22, 2010 decision on the grounds that the medical evidence submitted was insufficient to establish fact of injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<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 FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury<sup>4</sup> was sustained in the performance of duty, as alleged,

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<sup>2</sup> The Board notes that appellant has a September 4, 2009 injury claim under OWCP File No. xxxxxx468. Based on the evidence of record it is not clear as to whether that prior claim was accepted by OWCP.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on whether there is a causal relationship between the employee’s diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be 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 employee.<sup>7</sup>

### ANALYSIS

OWCP has accepted that the employment incident of December 24, 2009 occurred at the time, place and in the manner alleged. The issue is whether appellant’s neck and right shoulder conditions resulted from the December 24, 2009 employment incident. The Board finds that she did not meet her burden of proof to establish a causal relationship between the conditions for which compensation is claimed and the December 24, 2009 employment incident.

Dr. Goltz submitted several reports in which he diagnosed neck strain, right shoulder strain and right shoulder pain for unknown orthopedic reasons. He released appellant to limited duty on March 8, 2010 with restrictions on repetitive use of the right arm. Although the Board finds that Dr. Goltz did provide firm diagnoses, he failed to directly address the issue of causal relationship as he did not explain how the mechanism of the December 24, 2009 employment incident caused or aggravated appellant’s conditions. That is, Dr. Goltz failed to provide medical rationale explaining how her neck and right shoulder conditions were caused or aggravated by picking up a row of label tape or preventing a box from falling on December 24, 2009. Lacking thorough medical rationale on the issue of causal relationship, the reports are of limited probative value and not sufficient to establish that appellant sustained an employment-related injury in the performance of duty on December 24, 2009.

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<sup>5</sup> *T.H.*, 59 ECAB 388 (2008). See *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *Id.* See *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* See *Gary J. Watling*, 52 ECAB 278 (2001).

The reports from Ms. McCann, a physician's assistant, are of no probative value as she is not a physician under FECA.<sup>8</sup> As such, the Board finds that appellant did not meet her burden of proof with these submissions.

As appellant has not submitted any rationalized medical evidence to support her allegation that she sustained an injury causally related to the indicated employment factors, she has failed to meet her burden of proof.

On appeal appellant's attorney contends that the September 3, 2010 OWCP decision is contrary to fact and law. For the reasons stated above, the Board finds the attorney's argument is not substantiated.

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 submitted sufficient rationalized medical opinion evidence to establish that the December 24, 2009 employment incident was causally related to the neck and right shoulder conditions. Therefore, appellant failed to meet her burden of proof to establish a claim.

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<sup>8</sup> 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." *See also Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 3, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 3, 2011  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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