

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

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**L.R., Appellant**

**and**

**DEPARTMENT OF JUSTICE, BUREAU OF  
PRISONS, Pine Knot, KY, Employer**

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**Docket No. 11-165  
Issued: September 14, 2011**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On October 26, 2010 appellant filed a timely appeal from a September 21, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. Pursuant to the Federal Employees' Compensation Act (FECA)<sup>1</sup> and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on July 29, 2010.

**FACTUAL HISTORY**

On July 29, 2010 appellant, then a 31-year-old correctional officer, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left forearm, left knee, left leg and a right

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

upper thigh injury when she was in a motor vehicle accident. Appellant filed her claim and notified her supervisor on the same date. She stopped work on August 4, 2010.

By letter dated August 10, 2010, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and was directed to submit it within 30 days.

In a July 29, 2010 authorization for treatment form (CA-16), Richard Kearney, a safety specialist, noted that appellant was in a vehicle accident during prisoner transport and sustained a left knee injury.

Appellant submitted medical reports dated August 4 and 12, 2010 signed by Jonne L. Campbell, an advanced practice registered nurse (ARNP). In an August 4, 2010 attending physician's report (Form CA-20), Ms. Campbell reported that there was soft tissue swelling in the anteropedial aspect of the left leg and diagnosed a left leg injury. She checked the box marked "yes" to indicate that the condition was caused or aggravated by an employment activity.

By decision dated September 21, 2010, OWCP denied appellant's claim on the grounds that there was no medical evidence that provided a diagnosis which could be connected to the accepted July 29, 2010 employment incident.<sup>2</sup>

### **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

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<sup>2</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its September 21, 2010 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).

<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.

component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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>6</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 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>7</sup>

### ANALYSIS

OWCP found that the incident occurred as alleged on July 29, 2010. The issue, therefore, is whether appellant submitted sufficient medical evidence to establish that the employment incident caused a leg, arm or knee injury. The Board finds that she did not submit sufficient medical evidence to support that she sustained an injury causally related to the July 29, 2010 employment incident.<sup>8</sup> The medical evidence is deficient on two grounds: first, it fails to provide a firm diagnosis; and second, there is no narrative opinion on causal relationship between a diagnosed condition and the employment incident.

Appellant submitted medical reports and a Form CA-20 from Nurse Campbell dated August 4 and 12, 2010. This medical evidence is insufficient to establish a causal relationship between appellant's injury and the July 29, 2010 employment incident. Registered nurses, licensed practical nurses and physicians assistants, they are not physicians as defined under FECA, their opinions are of no probative value.<sup>9</sup>

The July 29, 2010 Form CA-16 from Safety Specialist Richard Kearney is also insufficient to establish appellant's claim. To establish causal relationship, appellant must submit a physician's report in which the physician reviews those factors of employment alleged to have caused her condition and, taking these factors into consideration, as well as findings

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<sup>6</sup> See 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

<sup>7</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>8</sup> See *Robert Broome*, 55 ECAB 339 (2004).

<sup>9</sup> 5 U.S.C. § 8102(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.

upon examination and appellant's medical history, explain how these employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his opinion.<sup>10</sup>

Appellant's honest belief that work caused her medical problem is not in question. That belief, however sincerely held, does not constitute the medical evidence necessary to establish causal relationship. In the instant case, the record is without rationalized medical evidence establishing a diagnosed medical condition causally related to the accepted July 29, 2010 employment incident. Thus, appellant has failed to establish her burden of proof.<sup>11</sup>

While the Form CA-16 does not establish fact of injury, OWCP failed to address the issue of appellant's entitlement to medical expenses. It is required by section 8103 of FECA<sup>12</sup> to provide all medical care necessary as a result of an employment injury. OWCP has broad discretionary authority in the administration of FECA and must, in fact, exercise such discretion to achieve the objective of section 8103. Ordinarily, when an employee sustains a job-related injury which may require medical treatment, the designated agency official shall promptly authorize such treatment by giving the employee a properly executed Form CA-16 authorizing medical treatment and expenses within four hours.<sup>13</sup> The agency official is not required to issue a Form CA-16 more than one week after the occurrence of the claimed injury.<sup>14</sup> The federal regulations provide that in unusual or emergency circumstances, OWCP may approve payment for medical expenses incurred otherwise than as authorized in section 10.303.<sup>15</sup> In this case, the employing establishment provided appellant with a Form CA-16 within a week of the employment incident. In denying appellant's claim for a traumatic injury, OWCP did not consider whether emergency circumstances or unusual circumstances were present or whether this was a situation in which reimbursement of medical expenses was appropriate.<sup>16</sup> The circumstances of the case warrant additional development of this issue. Therefore the case shall be remanded to OWCP for further development consistent with this decision of the Board, followed by an appropriate decision.

### **CONCLUSION**

The Board finds that, while the evidence does not establish that appellant sustained a traumatic injury on July 29, 2010, the issue of whether she is entitled to medical expenses due to

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

<sup>11</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 the Office at the time of its decision. 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.

<sup>12</sup> 5 U.S.C. § 8103.

<sup>13</sup> 20 C.F.R. § 10.300(b).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at § 10.304.

<sup>16</sup> *K.G.*, 111 LRP 29532 (2011); *L.B.*, 110 LRP 36615 (2010).

her authorized medical treatment via Form CA-16 has not been adequately addressed by OWCP and that the case must be remanded for OWCP to issue an appropriate decision in this regard.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 21, 2010 decision of the Office of Workers' Compensation Programs is affirmed. The case is remanded for further development consistent with this decision of the Board.

Issued: September 14, 2011  
Washington, DC

Alec J. Koromilas, Judge  
Employees' Compensation Appeals Board

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

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