



## **FACTUAL HISTORY**

On January 27, 2015 appellant, then a 50-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date she fell on ice while in the performance of duty. She indicated that she fell on her right elbow and arm. The reverse of the claim form indicated that appellant stopped working on January 27, 2015.

The record indicates that appellant received treatment from a nurse and nurse practitioner at a hospital on January 27, 2015. Appellant provided a history of a fall, landing on flexed elbow, and jamming the shoulder. The hospital report contains x-ray results from Dr. Orlin Hadjiev, a Board-certified radiologist, who reported that there was no evidence of a fracture of the right elbow, and no evidence of fracture or misalignment of the right shoulder. The record also contains reports from a nurse practitioner dated February 2, 10, and 23, 2015.

By letter dated March 18, 2015, OWCP requested that appellant submit additional medical evidence to support her claim. Appellant was afforded 30 days in which to respond.

Appellant submitted a May 9, 2015 magnetic resonance imaging (MRI) scan report for the right shoulder from Dr. Deidre Rippi, a radiologist, who reported a full-thickness tear of the anterior half fibers of the supraspinatus, superimposed on tendinopathy. She was also seen by a physician assistant on March 4 and 13, 2015.

By decision dated May 20, 2015, OWCP denied the claim for compensation. It found the medical evidence was insufficient to establish an injury causally related to a January 27, 2015 employment incident.

Appellant requested a review of the written record by an OWCP hearing representative on June 10, 2015. She submitted a July 2, 2015 report that was prepared by Dr. Bert Callahan, a Board-certified orthopedic surgeon, on July 17, 2015. Dr. Callahan indicated that appellant was seen for a preoperative consult, and reported a history that appellant fell on ice while delivering mail on January 27, 2015. The report provided results on examination and noted results of the May 9, 2015 MRI scan. Dr. Callahan indicated that appellant had right shoulder pain and was working light duty.

By decision dated November 24, 2015, the OWCP hearing representative affirmed the May 20, 2015 decision. She found the medical evidence was insufficient to establish the claim for compensation.

## 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 an occupational disease.<sup>4</sup>

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.

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 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

In the present case, appellant has claimed an injury resulting from a fall at work on January 27, 2015. OWCP has accepted that an incident occurred, but found that the medical evidence was insufficient to establish the claim. With respect to the medical evidence, the Board notes that to be of probative value a medical report must be from a physician under FECA. 5 U.S.C. § 8101(2) provides that a physician includes, "surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their

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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* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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

practice as defined by state law.”<sup>8</sup> As to medical evidence from a physician assistant or nurse practitioner, this does not constitute competent medical evidence under FECA.<sup>9</sup> Therefore the medical reports in the record from the nurse practitioner and physician assistant are of no probative value in establishing the claim.

Dr. Rippi, the radiologist, described a right shoulder rotator cuff tear, but did not discuss causal relationship with a January 27, 2015 employment incident. Dr. Callahan provided a brief history of the January 27, 2015 employment incident in the July 2, 2015 report, without providing additional relevant detail. He does not provide a medical opinion as to causal relationship between a diagnosed condition and the January 27, 2015 employment incident. Therefore the Board finds the report is not sufficient to establish an injury in the performance of duty on January 27, 2015.

It is appellant’s burden of proof to establish her claim. The medical evidence of record is insufficient to meet her burden of proof in this case.

On appeal, appellant asserts that she had no choice but to be seen by a nurse practitioner or a physician assistant. Her treatment by a nonphysician does not preclude her from submitting probative medical evidence from a physician on the issues presented. Appellant did submit additional medical evidence on appeal, but as noted above, the Board can consider only evidence that was before OWCP as of the issuance of the November 24, 2015 decision.<sup>10</sup> She 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 did not meet her burden of proof to establish an injury causally related to a January 27, 2015 employment incident.

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<sup>8</sup> 5 U.S.C. § 8101(2).

<sup>9</sup> See *C.J.*, Docket No. 15-1697 (issued February 5, 2016); *Irma J. Flood*, Docket No. 05-1522 (issued April 17, 2006).

<sup>10</sup> See *supra* note 2.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated November 24, 2015 is affirmed.

Issued: April 19, 2016  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board