

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

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**A.J., Appellant** )

**and** )

**U.S. POSTAL SERVICE, POST OFFICE,  
Coppell, TX, Employer** )

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**Docket No. 06-1075  
Issued: August 10, 2006**

*Appearances:*  
*A.J., pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge

**JURISDICTION**

On April 14, 2006 appellant filed a timely appeal from Office of Workers' Compensation Programs' decisions dated August 12, 2005 and March 16, 2006, denying her claim for a traumatic injury. Pursuant to 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 sustained an injury on June 7, 2005 in the performance of duty.

**FACTUAL HISTORY**

On June 20, 2005 appellant, then a 42-year-old clerk, filed a traumatic injury claim alleging that she sustained an aggravation of her preexisting reflex sympathetic dystrophy on June 7, 2005 when Linda Walker-Green, a coworker, struck her left arm.<sup>1</sup> On July 18, 2005 appellant filed an occupational disease claim for the same incident.

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<sup>1</sup> Appellant has a prior accepted claim for reflex sympathetic dystrophy caused by being struck by mail equipment on April 2, 2000.

In a June 23, 2005 letter, Don Kuykendall, appellant's supervisor, controverted her claim after interviewing appellant and Ms. Walker-Green. Ms. Walker-Green stated that she asked appellant to turn off her space heater because it was too warm in the mailroom. Appellant, who was wearing headphones and listening to loud music, did not respond. Ms. Walker-Green moved closer to appellant and asked her several times in a loud voice to turn off the heater. Thinking that appellant could not hear her, Ms. Walker-Green tapped appellant on the shoulder and called her name. Appellant shouted, "you hit me." Ms. Walker-Green responded, "I did not hit you. I was trying to get your attention since you could not hear me. I just tapped you on the shoulder." When Mr. Kuykendall went to interview appellant, she was calmly talking on the telephone. As he began to interview her, appellant became angry and upset and cried. Based on his interviews with appellant and Ms. Walker-Green, Mr. Kuykendall concluded that there had been no threat or act of violence. He noted that, on June 20, 2005, when appellant filed her accident report, she was leaning on her left arm, propping herself up at the counter, and did not appear to be in any obvious discomfort.

By decision dated August 12, 2005, the Office denied appellant's claim. The Office found that the factual evidence did not establish that the June 7, 2005 incident occurred as alleged or that appellant sustained a medical condition as a result of the incident.

Appellant requested reconsideration and submitted additional evidence.

In an employing establishment health record entry for June 7, 2005, a nurse indicated that appellant, crying and visibly upset, reported being "tapped" on the left shoulder by a coworker which triggered symptoms of her reflex sympathetic dystrophy.

On page one of a four-page report dated June 9, 2005, Dr. Christy M. Schade, an attending Board-certified anesthesiologist, stated that a coworker struck appellant's left arm three times which aggravated her left arm pain and caused significant emotional distress. The report was not signed.

In a police report dated June 7, 2005,<sup>2</sup> an officer stated that on June 7, 2005 appellant reported that she was assaulted by Ms. Walker-Green while she was listening to music on her headphones. Appellant alleged that Ms. Walker-Green hit her on the left shoulder three times with her open hand. She told the officer that she "did not suffer any injury but was offended by the contact" and wished Ms. Walker-Green to be prosecuted for assault. Ms. Walker-Green told the officer that she tapped appellant lightly on the shoulder to get her attention and did not intend to offend or hurt appellant.

By decision dated March 16, 2006, the Office denied modification of the August 12, 2005 decision.<sup>3</sup>

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<sup>2</sup> Page three of the police report is not of record.

<sup>3</sup> Appellant submitted additional evidence subsequent to the Office decision of March 16, 2006. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

## LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act<sup>4</sup> has the burden to establish the essential elements of 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, that an injury was sustained in the performance of duty as alleged 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 first must be determined whether the "fact of injury" has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged.<sup>6</sup> Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>7</sup> An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.

To establish a causal relationship between a claimant's condition and any attendant disability claimed and the employment event or incident, she must submit rationalized medical opinion evidence based on a complete factual and medical background supporting such a causal relationship. Rationalized medical opinion evidence is medical evidence which includes a physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. 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.<sup>8</sup>

## ANALYSIS

Appellant alleged that on June 7, 2005 she sustained an aggravation of her preexisting reflex sympathetic dystrophy when Ms. Walker-Green hit her left arm three times.

The Board finds that the factual evidence establishes that the June 7, 2005 incident occurred at the time and place alleged by appellant. However, the evidence does not establish that the incident occurred in the manner alleged. In an employing establishment health record entry for June 7, 2005, a nurse indicated that appellant reported being "tapped" on the left shoulder by a coworker. Ms. Walker-Green stated that she tapped appellant on the shoulder to get her attention because she was wearing headphones and did not hear Ms. Walker-Green call

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

<sup>7</sup> *Shirley A. Temple*, 48 ECAB 404 (1997).

<sup>8</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, *supra* note 7.

her name. In the June 7, 2005 police report, Ms. Walker-Green indicated that she tapped appellant lightly on the shoulder to get her attention. The factual evidence establishes that Ms. Walker-Green touched appellant on the arm but casts doubt on appellant's allegation that Ms. Walker-Green "hit" her arm. Therefore, appellant has not established that the June 7, 2005 incident occurred in the manner alleged.

The Board further finds that the medical evidence of record does not establish that appellant sustained an injury as a result of the June 7, 2005 incident. Appellant submitted page one of a four-page report dated June 9, 2005 in which Dr. Schade stated that a coworker struck her left arm three times which aggravated her left arm pain and caused significant emotional distress. However, this report was not signed by Dr. Schade. A medical report cannot be considered as probative medical evidence if there is no indication that the person completing the report qualifies as a "physician" as defined in 5 U.S.C. § 8101(2).<sup>9</sup> Additionally, this report is not based on an accurate factual history as the evidence does not establish that Ms. Walker-Green "hit" appellant's arm. As noted, a nurse indicated that appellant reported being "tapped," not hit, and Ms. Walker-Green acknowledged that she merely tapped appellant's arm. Medical opinions based on an incomplete or inaccurate history are of little probative value.<sup>10</sup> Due to these deficiencies, the medical evidence of record is not sufficient to establish that appellant sustained an injury in the performance of duty on June 7, 2005.

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on June 7, 2005.

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<sup>9</sup> See *Merton J. Sills*, 39 ECAB 572 (1988). The Board has consistently held that unsigned medical reports are of no probative value. See *Vickey C. Randall*, 51 ECAB 357 (2000).

<sup>10</sup> *Douglas M. McQuaid*, 52 ECAB 382 (2001); *Patricia M. Mitchell*, 48 ECAB 371 (1997).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated March 16, 2006 and August 12, 2005 are affirmed.

Issued: August 10, 2006  
Washington, DC

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

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