



## **FACTUAL HISTORY**

On December 4, 2009 appellant, then a 28-year-old practical nurse, filed a traumatic injury claim alleging that on November 16, 2009 a patient grabbed her right hand, bent her thumb backwards and twisted her wrist. The patient also kicked her lower legs.

By letter dated December 18, 2009, the Office advised appellant that the evidence submitted was insufficient to establish her claim. It requested that she submit additional factual and medical evidence, including a rationalized medical report from an attending physician which described a history of injury, provided a firm diagnosis and an opinion with medical reasons on why the diagnosed condition was caused or aggravated by the claimed injury. The Office allotted appellant 30 days to submit the requested information; but, appellant did not respond within the allotted time.

In a decision dated January 19, 2010, the Office denied appellant's claim. It found the evidence sufficient to establish that the November 16, 2009 incident occurred as alleged, but found that appellant failed to submit any medical evidence to establish that she sustained a right hand injury causally related to the accepted employment incident.<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 filed within applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition 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 on a traumatic injury of an occupational disease.<sup>5</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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 or exposure, which is alleged to have occurred.<sup>6</sup>

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<sup>2</sup> Following the issuance of the January 19, 2010 decision, the Office received additional evidence. On appeal, appellant also submitted additional evidence. The Board may not consider evidence for the first time on appeal, which was not before the Office at the time it issued the final decision in the case. 20 C.F.R. § 501.2(c). Appellant can submit this evidence to the Office with a formal written request for reconsideration. 5 U.S.C. § 8128; 20 C.F.R. § 10.606.

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> See *Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999); *Elaine Pendleton*, *supra* note 4.

<sup>6</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

In order to meet her burden of proof to establish the fact that she sustained an injury in the performance of duty, an employee must submit sufficient evidence to establish that she actually experienced the employment injury or exposure at the time, place and in the manner alleged.<sup>7</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>8</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>9</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>10</sup>

### **ANALYSIS**

The Board finds that appellant failed to meet her burden of proof to establish that she sustained a right hand injury resulting from the accepted November 16, 2009 employment incident. The Office's December 18, 2009 developmental letter specifically requested that appellant submit a rationalized medical opinion from an attending physician as to whether the accepted employment incident contributed to or caused the claimed right hand sprain/strain. Appellant did not respond and the record before the Board contains no medical evidence whatsoever. The Board finds, therefore, that she failed to establish a *prima facie* claim for compensation.<sup>11</sup>

### **CONCLUSION**

The Board finds that appellant failed to establish that she sustained a right hand injury in the performance of duty on November 16, 2009, as alleged.

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<sup>7</sup> *Linda S. Jackson*, 49 ECAB 486 (1998).

<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989); see 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined).

<sup>9</sup> *Lourdes Harris*, 45 ECAB 545 (1994); see *Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>10</sup> *Charles E. Evans*, 48 ECAB 692 (1997).

<sup>11</sup> See *Donald W. Wenzel*, 56 ECAB 390 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 19, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 4, 2010  
Washington, DC

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

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

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