

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

K.S., Appellant

and

**DEPARTMENT OF AGRICULTURE, FOOD
SAFETY & INSPECTION SERVICE,
Springdale, AR, Employer**

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**Docket No. 11-2071
Issued: April 17, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On September 29, 2011 appellant filed a timely appeal from April 15 and June 2, 2011 merit decisions of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on March 4, 2011.

FACTUAL HISTORY

On March 4, 2011 appellant, then a 38-year-old consumer safety inspector, filed a traumatic injury claim alleging that she fell in the break room during lunch that day. She

¹ 5 U.S.C. § 8101 *et seq.*

detailed that her foot was caught when she tried to get off a bench, causing her to lose her balance and fall. Appellant's left forearm and inner thigh struck the bench during the descent and her right arm, shoulder, back and knee struck the floor. The employing establishment controverted the claim on the grounds that the incident did not occur in the performance of duty.²

In a February 23, 2011 report, Dr. Caleb O. Gaston, a Board-certified family practitioner, related that appellant experienced chronic bilateral hand symptoms that were "worsened by her job." He noted that she performed repetitive activities as a food inspector. On examination, Dr. Gaston observed mildly-swollen fingers. He diagnosed hand pain, numbness and arthralgia.

In a March 5, 2011 attending physician's report, Dr. Gaston diagnosed right shoulder pain. He checked the "yes" box to indicate that the condition was causally related to appellant's federal employment and advised that she was totally disabled from March 5 to 12, 2011. Dr. Gaston also checked the "yes" box to confirm a history of preexisting injury.

OWCP informed appellant in a March 15, 2011 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a medical report from a physician explaining how the March 4, 2011 employment incident caused or contributed to a diagnosed condition. OWCP did not receive a response.

By decision dated April 15, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted March 4, 2011 employment incident was causally related to left forearm and inner thigh and right arm, shoulder, back and knee injuries.

Appellant requested reconsideration on April 27, 2011 and submitted new medical evidence. In a March 5, 2011 report, Dr. Gaston noted that she fell at work on March 4, 2011 and injured her right shoulder. He observed posterior right shoulder tenderness and restricted range of motion (ROM) while x-rays were unremarkable. Dr. Gaston diagnosed right shoulder joint pain and excused appellant from work for one week. In an April 25, 2011 attending physician's report, he checked the "no" box to indicate that the condition was not caused or aggravated by her federal employment. Dr. Gaston also checked the "no" box to reject a history of preexisting injury.

On June 2, 2011 OWCP denied modification of the April 15, 2011 decision.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,³ including that she is an "employee" within the meaning of FECA and that she filed her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an

² The case record contains a partially completed Form CA-16 signed by appellant's supervisor and dated March 4, 2011.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing 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. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

Causal relationship is a medical issue and the evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is 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, 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.⁷

ANALYSIS

The case record supports that appellant lost her balance and fell at work on March 4, 2011. The Board finds that she did not establish her traumatic injury claim because the medical evidence does not sufficiently demonstrate that this accepted employment incident led to a left forearm and inner thigh and right arm, shoulder, back and knee condition.

In a March 5, 2011 report, Dr. Gaston related that appellant fell at work on March 4, 2011 and sustained right shoulder joint pain. He also checked the "yes" box in a March 5, 2011 attending physician's report to indicate that this condition was due to her federal employment. Dr. Gaston, however, did not offer any medical rationale explaining how the March 4, 2011 fall pathophysiologically caused or contributed to the right shoulder injury.⁸ A checkmark response, without such rationale, is of diminished probative value on the issue of causal relationship.⁹ The need for medical rationale was particularly important here because the March 5, 2011 attending physician's report acknowledged a preexisting injury.

Dr. Gaston's subsequent April 25, 2011 attending physician's report, which concluded that appellant's right shoulder injury was not related to her federal employment, lacked probative value because it expressly contradicted his earlier opinion on causal relationship.¹⁰ His

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

⁹ *Alberta S. Williamson*, 47 ECAB 569 (1996).

¹⁰ *See Cleona M. Simmons*, 38 ECAB 814 (1987).

February 23, 2011 report was irrelevant as it addressed a bilateral hand condition that resulted from repetitive motion over a period of time, implicating a separate occupational disease that is not presently before the Board.¹¹ In the absence of rationalized medical opinion evidence, appellant did not meet her burden of proof.

Appellant contends on appeal that she sought medical treatment promptly and, alternatively, that she was unable to address the deficiencies of her case on account of familial obligations. As noted, the medical evidence remained inadequate to establish a causal relationship between her federal employment and the purported injuries.

The Board points out that appellant submitted new evidence on appeal. The Board lacks jurisdiction to review evidence for the first time on appeal.¹² However, appellant may submit new evidence or argument as part of a formal 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 10.607.¹³

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on March 4, 2011.

¹¹ See 20 C.F.R. § 10.5(q) & (ee). See also *John W. Montoya*, 54 ECAB 306, 309 (2003) (a physician's opinion must discuss whether the employment incident described by the claimant caused or contributed to diagnosed medical condition).

¹² 20 C.F.R. § 501.2(c).

¹³ The Board notes that the employer issued a partially completed CA-16 form to appellant on March 4, 2011. A properly executed CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay the cost of the examination or treatment regardless of the action taken on the claim. See *Elaine M. Kreymborg*, 41 ECAB 256 (1989). Although OWCP adjudicated and denied appellant's claim of injury, it did not adjudicate the issue of reimbursement.

ORDER

IT IS HEREBY ORDERED THAT the June 2 and April 15, 2011 decisions of the Office of Workers' Compensation Programs be affirmed.

Issued: April 17, 2012
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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