



By letter dated June 16, 2011, the employing establishment controverted the claim. Postmaster Blain Crickenberger stated that appellant sought treatment for her elbow on June 8, 2011 and informed him that she needed surgery as soon as possible due to a pinched nerve which had caused the muscle in her hand to start deteriorating. He questioned whether this condition could occur in less than a month.

In a May 31, 2011 report, Dr. Sanjay S. Desai, a Board-certified orthopedic surgeon, reported that appellant sought treatment on May 31, 2011 for a new condition after having increasing numbness and tingling in the small and ring finger of her left hand. Appellant did not recall any specific injury or trauma and stated that her fingers were constantly numb. Dr. Desai diagnosed ulnar nerve compression of the left elbow and recommended neurometric testing.

In a June 8, 2011 electromyography (EMG) test, Dr. Charles W. Vokac, Board-certified in physical medicine and rehabilitation, reported evidence of left ulnar neuropathy at the elbow with denervation, resolution of left carpal tunnel syndrome status post release and no peripheral neuropathy.

In a June 8, 2011 report, Dr. Desai stated that appellant's neurometric testing showed severe compression of the ulnar nerve in the elbow with denervation. He recommended an ulnar nerve release as soon as possible because loss of muscle strength in her left hand could be irreversible. In a June 20, 2011 duty status report (Form CA-17), Dr. Desai restricted appellant's work duties due to her severe compression of the ulnar nerve in the elbow with denervation.

In a July 7, 2011 surgical report, Dr. Desai stated that appellant underwent a left endoscopic ulnar nerve release and tolerated the procedure well.

By letter dated July 28, 2011, OWCP informed appellant that the evidence received was insufficient to support her claim. It requested additional factual and medical evidence and asked that she respond to the provided questions within 30 days.

In support of her claim, appellant submitted a claim for compensation (Form CA-7) for leave without pay and time analysis forms (CA-7a) for the period July 12 to August 20, 2011.

In an August 11, 2011 report, Dr. Desai noted that postsurgery, appellant complained of some discomfort flexing her left small finger. He diagnosed probable early trigger digit left small finger.

By decision dated November 22, 2011, OWCP denied appellant's claim finding that the evidence did not establish that the May 19, 2011 incident occurred as alleged. It also found that she failed to establish a diagnosed medical condition causally related to the alleged employment incident.

### **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>2</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>3</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>4</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that she sustained an injury in the performance of duty, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that such event, incident or exposure caused an injury.<sup>5</sup> Once an employee establishes that she sustained an injury in the performance of duty, she has the burden of proof to establish that any subsequent medical condition or disability for work, for which she claims compensation is causally related to the accepted injury.<sup>6</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.<sup>7</sup>

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>8</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

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<sup>2</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>3</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>4</sup> *Elaine Pendleton*, *supra* note 2.

<sup>5</sup> *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant's burden of proof in an occupational disease claim.

<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>8</sup> *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

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>9</sup>

### ANALYSIS

The Board finds that appellant failed to establish that she sustained an injury in the performance of duty on May 19, 2011.

Appellant must establish all of the elements of her claim. A traumatic injury is defined by OWCP implementing regulations as "a condition of the body caused by a specific event or incident, a series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected."<sup>10</sup>

Before the medical evidence submitted can be considered, appellant must establish the time, place and manner of injury. She alleged that on May 19, 2011 she leaned on her left elbow and her fingers went numb. Appellant has not provided sufficient detail necessary to establish that a traumatic incident occurred in the manner alleged.<sup>11</sup> She failed to present evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury.<sup>12</sup> Appellant failed to adequately describe the circumstances of her injury, specifically how stress was placed on her left elbow, with a complete description of the duties she was performing which caused this injury. She did not respond to OWCP's July 28, 2011 development questionnaire letter or provide additional factual evidence as requested. Moreover, the employing establishment controverted the claim. An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's claimed condition became apparent during a period of employment nor her belief that her condition was aggravated by her employment is sufficient to establish causal relationship.<sup>13</sup>

In medical reports dated May 31 to August 11, 2011, Dr. Desai noted that appellant complained of increased numbness and tingling in the small and ring finger of her left hand. He noted as history that she did not recall any specific injury or trauma and stated that her fingers were constantly numb. Dr. Desai diagnosed ulnar nerve compression of the left elbow and appellant underwent left endoscopic ulnar nerve release. While he provided a diagnosis, the physician failed to provide an opinion on the cause of her injury. Dr. Desai's reports indicate

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<sup>9</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>10</sup> 20 C.F.R. § 10.5(ee); *see also J.W.*, Docket No. 11-1475 (issued December 7, 2011).

<sup>11</sup> *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>12</sup> *Paul Foster*, 56 ECAB 1943 (2004).

<sup>13</sup> *D.I.*, 59 ECAB 158 (2007); *Ruth R. Price*, 16 ECAB 688, 691 (1965).

that appellant did not identify a specific injury or trauma which caused her injury, making no mention of the alleged May 19, 2011 employment incident. His reports do not offer any rationalized medical opinion or evidence by history to fill in the gaps of her account of the May 19, 2011 incident.

The remaining medical evidence of record also fails to establish that the incident occurred in the manner alleged. Dr. Vokac's nerve conduction study failed to address how the May 19, 2011 incident occurred. While appellant has established a firm medical diagnosis of ulnar nerve compression of the left elbow, the record lacks any evidence establishing the factual element of her claim, namely, that the alleged May 19, 2011 employment incident caused her medical injury or disease. She has not submitted sufficient evidence to establish that she actually experienced an employment incident at a given time, place and in a given manner.<sup>14</sup>

An award of compensation may not be based on surmise, conjecture, speculation or on the employee's own belief of causal relation.<sup>15</sup> Appellant failed to provide evidence to prove the fact of injury, its time, place and manner, and that the injury was causally related to her federal employment. Thus, OWCP properly denied her claim for compensation.

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.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained an injury in the performance of duty on May 19, 2011.

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<sup>14</sup> *Supra* note 11.

<sup>15</sup> *D.D.*, 57 ECAB 734 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated November 22, 2011 is affirmed.

Issued: July 2, 2012  
Washington, DC

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

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

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