

her back.² She stated that she had previously been injured on January 20, 2000 and March 16, 2004.³ Appellant initially thought her back pain was from the March 16, 2004 employment incident but her physician informed her that her pain stemmed from the January 20, 2000 injury. She notified her supervisor of her injury on April 15, 2011. Appellant's supervisor noted that appellant occasionally left work early due to complaints of back pain.

By letter dated May 2, 2011, OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical and factual evidence needed and asked that she respond to the provided questions within 30 days. In a different letter dated May 2, 2011, OWCP requested additional information from the employing establishment regarding appellant's duties as a letter carrier.

By letter dated May 7, 2011, the employing establishment reported that appellant complained of backaches and left early on some days but did not specify what caused her pain. It reported that her main assignments were to case and pull down routes and occasionally deliver letters. The employing establishment further noted that appellant did not perform any lifting, pushing, pulling, stooping or bending when breaking up the routes.

By decision dated July 20, 2011, OWCP denied appellant's claim finding that the evidence did not establish that the occupational exposure occurred as alleged. It also noted that she failed to establish that she sustained an injury because no medical evidence was submitted.⁴

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of establishing the essential elements of his or her claim, including employment status within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA⁶ and that an injury was sustained in the performance of duty.⁷ These are the essential elements of each compensation

² Appellant stated that she initially thought her back pain was from a March 16, 2004 accident but that her physician stated that her pain stemmed from a traumatic injury that occurred on January 20, 2000. She stated that her March 16, 2004 injury aggravated her January 20, 2000 injury. Appellant referenced claim File No. xxxxxx079 for the March 16, 2004 injury. The January 20, 2000 injury is unidentified and the record before the Board contains no further information.

³ On March 16, 2004 appellant filed a traumatic injury claim when she was hit by a car while unloading mail, claim File No. xxxxxx079. By decision dated April 29, 2004, OWCP accepted the claim for herniated disc of the lumbar spine and contusion of both knees. By decision dated September 23, 2010, it terminated appellant's benefits for the previously covered herniated lumbar disc condition in claim No. xxxxxx079. The record before the Board provides no details concerning an injury on January 20, 2000.

⁴ The Board notes that appellant submitted additional evidence after OWCP rendered its July 20, 2011 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952). Appellant may submit this evidence to OWCP, together with a formal request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

⁵ 5 U.S.C. §§ 8101-8193.

⁶ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *James E. Chadden Sr.*, 40 ECAB 312 (1988).

claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁸

When an employee claims that she sustained an injury in the performance of duty she must submit sufficient evidence to establish a specific event, incident or exposure occurring at the time, place and in the manner alleged. She must also establish that the event, incident or exposure caused an injury.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant failed to establish that she developed osteophytes lining her spine in the performance of duty as a letter carrier.

Appellant must establish all of the elements of her claim in order to prevail. She must prove her employment, time, place and manner of injury, a resulting personal injury and that her injury arose in the performance of duty. Appellant alleged that she developed osteophytes lining the spine from her duties as a letter carrier.

Appellant has not provided sufficient detail to establish that an occupational exposure occurred as alleged.¹¹ She states that she constantly raised her arms to case mail and lifted heavy bundles. Appellant has failed to describe the circumstances of her alleged injury, how she injured her back and the duties she was performing which caused her injury. She did not state the number of hours she worked in a day, did not describe her limited-duty restrictions and failed to identify the periods and the frequency of the physical movements and tasks she performed at work. Appellant did not respond to the questionnaire in OWCP's May 2, 2011 development letter and did not provide OWCP with the additional factual evidence requested. She also noted that she had prior back injuries from an unidentified January 20, 2000 incident and a March 16, 2004 employment incident. These earlier injuries make it unclear whether appellant's current alleged injury is a result of occupational exposure from her duties as a letter carrier or otherwise. It is her burden to specify the nature of her claim but she has never connected her present condition to any previous injury or claim. Appellant alleges a new injury based upon cumulative trauma. Moreover, the employing establishment has stated that she did not perform any lifting, pushing, pulling, stooping or bending when performing her duties.

⁸ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁹ 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.

¹⁰ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

¹¹ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

Appellant did not submit medical evidence with her occupational exposure claim. Because no medical evidence containing a physician's opinion was ever received, she failed to establish a firm medical diagnosis of her injury.¹²

In the instant case, the record lacks evidence establishing the factual element of appellant's claim, namely, that any specific occupational exposure might have caused her injury or disease. The record also lacks medical evidence to establish an injury. An award of compensation may not be based on surmise, conjecture or speculation. Because appellant did not submit sufficient evidence demonstrating the alleged occupational exposure actually occurred as alleged, OWCP properly denied her claim. 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 developed osteophytes lining the spine in the performance of duty as a letter carrier.

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 6, 2012
Washington, DC

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

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

¹² *Victor J. Woodhams*, 41 ECAB 345 (1989).