

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

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**B.G., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
New Orleans, LA, Employer**

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**Docket No. 12-1944  
Issued: April 9, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA HOWARD FITZGERALD, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On September 21, 2012 appellant filed a timely appeal from a March 30, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim for an employment-related injury. Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on August 25, 2011, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the issuance of the March 30, 2012 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On August 25, 2011 appellant, then a 52-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she was involved in a motor vehicle accident while in the performance of duty that day. She alleged that she sustained an injury to her left buttocks and the middle of her back as a result of being rear-ended while sitting in traffic.

Appellant submitted an authorization for examination and/or treatment (Form CA-16) dated August 25, 2011 completed by an unidentifiable physician who diagnosed neck/back strain.

In a September 19, 2011 letter, OWCP notified appellant of the deficiencies of her claim and requested additional factual and medical evidence. It afforded her 30 days to respond to its inquiries.

Subsequently, appellant submitted duty status reports, CA-17 forms, containing illegible signatures dated August 25 and September 16, 2011.

In a September 20, 2011 report, Dr. Matthew Grimm, a Board-certified orthopedic surgeon, stated that appellant had tenderness about the spine diffusely. Appellant reported injuring the mid-portion of her back and neck in a motor vehicle accident while at work the prior month and had seen several doctors. She tried to go back to work but began having swelling and spasms in her leg. Appellant also reported occasional numbness in her hands and feet. Dr. Grimm opined that she could potentially do some light duties but another physician had placed her off work.

By decision dated October 25, 2011, OWCP accepted that the August 25, 2011 incident occurred as alleged. It denied appellant's claim, finding that she failed to submit sufficient evidence to establish an injury related to the incident.

On November 14, 2011 appellant requested a review of the written record by an OWCP hearing representative. She submitted an August 25, 2011 report from West Jefferson Industrial Medicine indicating that she was rear-ended at a stop sign and diagnosed with lumbar strain and cervical strain. Appellant also submitted duty status reports, CA-17 forms, containing illegible signatures dated October 7, 2011 through January 6, 2012.

By decision dated March 30, 2012, an OWCP hearing representative affirmed the October 25, 2011 decision finding that the evidence submitted failed to establish fact of injury.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<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 FECA, that the claim was timely filed within the applicable time

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

limitation period of FECA, that an injury<sup>4</sup> 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 must first be determined whether a “fact of injury” has been established. A fact of injury determination is based on two elements. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.<sup>6</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>7</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

OWCP accepted that appellant was involved in a motor vehicle accident as a letter carrier on August 25, 2011. It denied her claim, however, on the basis that the evidence failed to establish a medical diagnosis in connection with the injury or events.

In an August 25, 2011 report, the same day as the accepted employment incident, West Jefferson Industrial Medicine noted that appellant was rear-ended at a stop sign and diagnosed with lumbar strain and cervical strain. Moreover, appellant also submitted an authorization for examination and/or treatment (Form CA-16) dated August 25, 2011.<sup>8</sup> She was diagnosed with neck/back strain. Although these reports do not explain how the employment incident caused the

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<sup>4</sup> OWCP regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or 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. 20 C.F.R. § 10.5(ee).

<sup>5</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>6</sup> *Id.* See also *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* See also *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> The Board notes that a properly executed Form CA-16 creates a contractual obligation to pay for the cost of examination or treatment regardless of the action taken on the claim. See *Tracey P. Spillane*, 54 ECAB 608 (2003) and 20 C.F.R. § 10.300(c).

diagnosed conditions, they strongly suggest and support a relationship between the employment incident and appellant's neck and back conditions. The reports are also consistent with the factual history provided by appellant and Dr. Grimm.<sup>9</sup>

The Board finds that, while the reports are not completely rationalized, they are consistent in indicating that appellant sustained neck and back conditions and are not contradicted by any substantial medical or factual evidence of record.<sup>10</sup> Although the reports are not sufficient to meet her burden of proof to establish a claim, it raises an uncontroverted inference between her neck and back conditions and the employment incident and, thus, they are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>11</sup>

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>12</sup> While the claimant has the responsibility to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence and has the obligation to see that justice is done.<sup>13</sup> Thus, the Board will remand the case to OWCP for further development to obtain a rationalized medical opinion as to whether appellant's condition is causally related to the employment incident and a *de novo* decision on whether she sustained an injury in the performance of duty on August 25, 2011, as alleged.

### CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>9</sup> The Board notes that the duty status reports submitted by appellant and containing illegible signatures are of no probative value as they cannot be properly identified as being prepared by a physician. *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>10</sup> See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>11</sup> *Id.*

<sup>12</sup> See *Vanessa Young*, 55 ECAB 575 (2004).

<sup>13</sup> See *Richard E. Simpson*, 55 ECAB 490 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 30, 2012 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: April 9, 2013  
Washington, DC

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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

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