

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

K.K., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Abilene, TX, Employer**

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**Docket No. 13-1205
Issued: December 13, 2013**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On April 22, 2013 appellant filed a timely appeal from a March 22, 2013 merit decision 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 merits of this case.

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on February 3, 2013.

FACTUAL HISTORY

Appellant, a 54-year-old mail handler, filed a claim for benefits on February 4, 2013 alleging that she injured her right wrist, right knee and lower back when she fell on February 3, 2013.

¹ 5 U.S.C. § 8101 *et seq.*

In an attending physician's report dated February 4, 2013, it was listed that appellant sustained a sprained left wrist, contusion of the right knee and lower back strain on February 3, 2013. The form was signed by Dusty Meeks, a registered nurse. Appellant also submitted a February 11, 2013 Texas Workers' Compensation status report, signed by a nurse practitioner. It noted that she sustained a left wrist, contusion of the right knee and lower back strain on February 3, 2013.

On February 14, 2013 OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked her to submit a comprehensive medical report from a treating physician describing her symptoms and the medical reasons for her condition. The physician was to state an opinion as to whether her claimed condition was causally related to her federal employment and a diagnosis. OWCP requested that appellant submit the additional evidence within 30 days.

Appellant submitted a February 26, 2013 form nurse report from Harris Methodist Occupational Health, which advised that she sustained a right wrist sprain, lumbar strain and contusion/strain of her right knee, but did not indicate the date of injury. She underwent x-rays of her right wrist and lumbar spine on February 26, 2013 which showed no acute bony abnormality. In a Form CA-17 report dated February 26, 2013, it was indicated that appellant had sustained a contusion/strain of her right knee and outlined work restrictions. The form contains an illegible signature from a physician but did not list the date of injury.

The record reflects that on August 13, 2012, prior to the claimed injury, appellant underwent surgery for excision of a ganglion cyst and extensor tenosynovectomy of her right wrist. The procedure was performed by Dr. John S. Badylak, a specialist in orthopedic surgery.

By decision dated March 22, 2013, OWCP accepted that the February 3, 2013 incident occurred as alleged. It denied appellant's claim finding that she failed to submit sufficient medical evidence from a physician on the issue of causal relation.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of establishing that 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 limitation period of FECA, that an injury was sustained 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.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

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. 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.⁵ 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.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized 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 of the claimant, 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

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.⁸

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by his employment is sufficient to establish causal relationship.⁹ Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

ANALYSIS

OWCP accepted that appellant fell on her wrists on February 3, 2013. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.¹⁰ Appellant has not submitted rationalized, probative medical evidence to establish that the February 3, 2013 employment incident caused a diagnosed injury.

Appellant stated on her Form CA-1 that she injured her right wrist, right knee and low back when she fell on February 3, 2013. She did not submit evidence from a physician that reflects an accurate history of the accepted incident, a firm medical diagnosis of her condition or addresses how her condition was causally related to the February 3, 2013 work incident. The record reflects that appellant underwent surgery on August 13, 2012, prior to the accepted incident. None of the form reports, diagnostic test results or hospital treatment records provide a physician’s opinion pertaining to causal relationship. Therefore, appellant failed to provide

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term “injury,” see 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

⁸ *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

⁹ *Id.*

¹⁰ *Carlone*, *supra* note 5.

medical evidence that explains how the work incident of February 3, 2013 caused or contributed to the claimed right wrist, right knee or low back conditions.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested and the medical rationale expressed in support of stated conclusions.¹¹ The medical reports of record do not address whether she injured her right wrist, right knee or low back by the February 3, 2013 work incident.

Appellant submitted reports and notes signed by nurse practitioners. Healthcare providers such as a nurse, acupuncturist, physician's assistant and physical therapist are not defined as a "physician" under FECA. These reports do not constitute competent medical evidence to establish a medical condition, disability or causal relationship.¹² These reports are insufficient to satisfy appellant's burden.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. The Board finds that she did not meet her burden of proof.

Appellant may submit new evidence or argument with a 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.

CONCLUSION

The Board finds that appellant has failed to establish that she sustained an injury in the performance of duty on February 3, 2013.

¹¹ See *Anna C. Leanza*, 48 ECAB 115 (1996).

¹² 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB 389 (2007); *Jerre R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

ORDER

IT IS HEREBY ORDERED THAT the March 22, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 13, 2013
Washington, DC

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

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

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