

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

S.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Coleman, WI, Employer**

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**Docket No. 12-1216
Issued: February 5, 2013**

Appearances:
Michael G. Perry, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On May 15, 2012 appellant, through her attorney, filed a timely appeal from the December 14, 2011 decision of the Office of Workers' Compensation Programs (OWCP), which affirmed as modified OWCP's denial of the claim. 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 met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on April 7, 2011.

FACTUAL HISTORY

On April 23, 2011 appellant, then a 59-year-old part-time flexible clerk, filed a traumatic injury claim alleging that on April 7, 2011 she was hit in the lip by a parcel at work. She noted neck pain and stopped work on April 18, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

OWCP received medical records and work excuses. An April 18, 2011 treatment note listed that appellant was treated for neck pain and cervical radiculopathy; however, the provider's name is illegible. She underwent a cervical fusion on April 28, 2011.

By letter dated May 5, 2011, OWCP advised appellant that additional factual and medical evidence was needed. It explained that a physician's opinion was crucial to her claim and allotted her 30 days to submit the requested information.

In a claim addendum, received by OWCP on May 9, 2011, appellant noted that, on the morning of Thursday, April 7, 2011, she was sorting parcels and was struck on the right side of her mouth with such force that it jarred her head backwards. She explained that she continued working the rest of the day and did not have immediate pain. Appellant noted that she had a previously scheduled vacation for the following day, Friday and Saturday and Monday were her regularly scheduled days off. After she returned home on Thursday, she began experiencing upper left back but did not initially associate this with the work incident. Appellant indicated that she also began to have cold symptoms prior to the incident and felt that her symptoms were settling in the back. She developed a bruise on the right corner of her mouth. Appellant explained that her back symptoms progressively worsened over the next several days as did her cold symptoms with a steady cough. She noted that when she returned from her vacation she sought treatment and was diagnosed with bronchitis. Her upper back pain did not improve although her bronchitis improved. OWCP also received statements dated April 19, 23 and May 2, 2011 from appellant's husband corroborating appellant's description of events.

OWCP received a statement from the employing establishment, which included a narrative list of difficulty with appellant's performance and leave since January 2011.² It noted that she called in sick with bronchitis on April 11, 2011 but came to work on April 12, 2011. Appellant's work performance was discussed and it was noted that no mention was made of having sustained an injury on April 7, 2011. Furthermore, her husband called to indicate that she was hospitalized on April 18, 2011. The supervisor advised that appellant did see the bruise on her lip but she did not report how it happened.

By decision dated June 6, 2011, OWCP denied appellant's claim finding that the medical evidence did not demonstrate that the claimed medical condition was related to the accepted work-related incident.

On June 7, 2011 OWCP received appellant's June 2, 2011 response to the request for additional information. Appellant described her injury and course of treatment. OWCP also received a statement from appellant's son, who explained that, on the weekend of April 8, 2011, he witnessed her with a large bruise on her face. He noted that appellant informed him that a large package hit her in the face at work on the previous day. For the rest of the weekend, appellant utilized a heating pad and pain medication to remedy the pain in her upper back area.

In a May 19, 2011 report, Dr. Paul Baek, a Board-certified neurosurgeon, noted appellant's history of injury. Appellant had a work-related injury where she struck her head along the facial area resulting in arm and shoulder pain. Dr. Baek indicated that she had significant spondylosis resulting in arm symptoms on the left side, mainly due to C5-6, C6-7

² It is not clear who compiled the narrative, as it was unsigned.

central and foraminal stenosis. He explained that this was confirmed with magnetic resonance image (MRI) scan and x-ray. Dr. Baek noted that appellant was currently recovering from her anterior cervical fusion surgery at C5-6, C6-7.

On June 14, 2011 appellant requested a telephonic hearing, which was held on October 12, 2011. In letters dated November 8, 2011, her representative submitted additional medical evidence.

In reports dated November 1 and 8, 2011, Dr. Baek opined that appellant was involved in a work-related injury, which was related to aggravation of her prior previous medical condition. In a June 10, 2011 report, Dr. Diego Restrepo, a Board-certified family practitioner, explained that he examined her on April 4, 2011 for her annual physical. At that time, appellant did not have any complaints. Dr. Restrepo noted that on April 11, 2011 he examined her and she had a cough, shortness of breath and achy neck pain. He diagnosed bronchitis. Dr. Restrepo also noted the subsequent surgical procedure performed by Dr. Baek, which included the C5-6 anterior cervical discectomy and decompression and the C6-7 anterior cervical discectomy and decompression of the spinal cord foramen.

By decision dated December 14, 2011, the hearing representative denied the claim finding that she did not establish that the work incident occurred as alleged and because the medical evidence did not establish that the incident, even if established, resulted in a cervical condition.

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 timely filed within the applicable time limitation period of FECA and that an injury was sustained in the performance of duty.³ These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that he actually experienced the employment incident at the time, place and in the manner alleged.⁵ In some traumatic injury cases, this component can be established by an employee’s uncontroverted statement on the Form CA-1.⁶ Second, the

³ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁵ *T.H.*, 59 ECAB 388 (2008); see Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803.2a (June 1995).

⁶ *John J. Carlone*, 41 ECAB 354 (1989).

employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and his subsequent course of action.⁸ A consistent history of the injury as reported on medical reports to appellant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.⁹ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹⁰ Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,¹¹ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.¹²

ANALYSIS

Appellant alleged that, on April 7, 2011, she was struck on the lip by a parcel in the performance of duty. OWCP initially found that the evidence supported that the claimed incident occurred. The hearing representative modified the prior decision, finding inconsistencies, the Board does not agree. The statement by appellant is consistent in that she was sorting parcels and was struck on the lip and right side of her mouth by a parcel. The statement from the employing establishment which questioned the incident was unsigned. Furthermore, the Board notes that a bruise was confirmed on appellant's lip. Although the employing establishment suggested the claim was related to leave issues, there is no evidence to suggest that the incident did not occur. Therefore, the Board finds that the first component of fact of injury is established; the claimed incident -- that appellant was working on April 7, 2011 and was struck on the lip and right side of her mouth by a parcel.

The medical evidence however is insufficient to establish that the employment incident caused an injury. The medical reports of record do not establish that being struck on the lip and right side of her caused a personal injury on April 7, 2011. The medical evidence contains no

⁷ *See id.*

⁸ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

⁹ *Id.* at 255-56.

¹⁰ *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

¹¹ *Id.*

¹² *Joseph A. Fournier*, 35 ECAB 1175 (1984).

reasoned no explanation of how the employment incident of April 7, 2011 caused or aggravated an injury.¹³

In a May 19, 2011 report, Dr. Baek noted that appellant reported a history of being struck her head along the facial area resulting in arm and shoulder pain. He noted that she had significant spondylosis resulting in arm symptoms on the left side, mainly due to C5-6, C6-7 central and foraminal stenosis. Dr. Baek also indicated that appellant anterior was recovering from recent cervical fusion surgery. The Board notes that this report does not provide a rationalized opinion on causal relation.¹⁴ Dr. Baek did not list the April 7, 2011 date of injury or see appellant until some six weeks later. He did not provide a rationalized medical opinion on the issue of causal relationship between the claimant's diagnosed spinal condition and the alleged incident.¹⁵ A physician's opinion 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.¹⁶ Dr. Baek's reports of November 1 and 8, 2011 contained a general opinion that appellant was involved in a work-related injury, which was related to aggravation of her prior previous medical condition. Without rationale to support the opinion, they are of limited probative value.

Appellant also included a June 10, 2011 report from Dr. Restrepo, who explained that he examined her on April 4, 2011 for her annual physical and determined that there were no preexisting complaints. On April 11, 2011 Dr. Restrepo examined her and she had a cough, shortness of breath and achy neck pain. He diagnosed bronchitis. Dr. Restrepo stated that appellant subsequently underwent C5-6 anterior cervical discectomy and decompression and the C6-7 anterior cervical discectomy and decompression of the spinal cord foramen. He did not address the April 17, 2011 incident or explain how it would be competent to cause appellant's cervical condition. The Board has held that an opinion that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, is insufficient, without supporting rationale, to establish causal relation.¹⁷

The medical records submitted by appellant do not provide a physician's opinion addressing causal relationship. Appellant alleged that being struck on the lip by a parcel caused neck pain and cervical radiculopathy. The medical reports submitted to the record do not adequately address the cause of her neck condition. They are insufficient to establish that the April 7, 2011 employment incident caused or aggravated a cervical injury.¹⁸

¹³ See *George Randolph Taylor*, 6 ECAB 986, 988 (1954) (where the Board found that a medical opinion not fortified by medical rationale is of little probative value).

¹⁴ *Elizabeth Stanislav*, 49 ECAB 540, 541 (1998).

¹⁵ *Duane B. Harris*, 49 ECAB 170, 173 (1997).

¹⁶ *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

¹⁷ *Kimper Lee*, 45 ECAB 565 (1994).

¹⁸ See *Willie M. Miller*, 53 ECAB 697 (2002).

On appeal, appellant's representative argued that the medical evidence had been misconstrued as there is no dispute that appellant received a blow to her head while at work. He also argued that her examination on April 4, 2011 did not reflect any cervical symptoms. The Board notes that, while Dr. Restrepo stated that appellant had no prior symptoms, Dr. Baek addressed a preexisting cervical condition. It is not apparent that Dr. Restrepo provided a full or accurate medical history.

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 not met her burden of proof in establishing that she sustained an injury in the performance of duty on April 7, 2011.

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 5, 2013
Washington, DC

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

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

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