



On appeal appellant submitted new evidence in support of her claim.

### **FACTUAL HISTORY**

On November 8, 2011 appellant, then a 26-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that she was involved in a motor vehicle accident in the performance of duty on November 1, 2011, as a result of a gust of wind blowing her vehicle into a ditch. Appellant did not stop work.

Appellant submitted pay rate information, a November 1, 2011 hospital consent form and a November 3, 2011 report by an unidentifiable physician releasing appellant to return to work without restrictions.

By letter dated November 21, 2011, OWCP notified appellant of the deficiencies of her claim and requested additional factual and medical evidence, including a diagnosis of a condition resulting from her injury. It afforded her 30 days to submit additional evidence and respond to its inquiries. Appellant did not respond.

By decision dated December 29, 2011, OWCP accepted that the November 1, 2011 incident occurred as alleged but denied appellant's claim finding that she failed to submit evidence containing a medical diagnosis in connection with the injury or events. Thus, it concluded that she had not established fact of injury.

On January 10, 2012 appellant requested reconsideration and submitted a November 1, 2011 report by Dr. Albert R. Claassen, an emergency room physician, who diagnosed shoulder pain and indicated that appellant was a mail carrier who was involved in a rollover at approximately 45 miles per hour. Appellant also submitted a November 3, 2011 report by Dr. Cathy N. Cooper, a Board-certified family medicine physician,<sup>3</sup> who diagnosed left acromioclavicular (AC) joint sprain and indicated that appellant was involved in a motor vehicle accident on November 1, 2011, when she rolled her jeep.

By decision dated March 29, 2012, OWCP denied modification of its December 29, 2011 decision finding that the evidence submitted failed to establish fact of injury. It noted the November 3, 2011 treatment note but found it to be of no probative weight as it had not been signed by a physician.

On May 10, 2012 appellant requested reconsideration and resubmitted the November 3, 2011 report by Dr. Cooper.

By decision dated June 7, 2012, OWCP denied appellant's request for reconsideration finding that she did not submit pertinent new and relevant evidence and did not show that OWCP erroneously applied or interpreted a point of law not previously considered by OWCP.

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<sup>3</sup> This treatment note was signed by a Russel R. McCaig and co-signed by Dr. Cathy N. Cooper.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA<sup>4</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 limitation period of FECA, that an injury<sup>5</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>6</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>7</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>8</sup>

## ANALYSIS -- ISSUE 1

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 rural carrier associate on November 1, 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 a November 3, 2011 report, Dr. Cooper diagnosed left AC joint sprain “S/P MVA” and noted that appellant was involved in a motor vehicle accident on November 1, 2011. OWCP had

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<sup>4</sup> 5 U.S.C. §§ 8101-8193.

<sup>5</sup> OWCP’s 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>6</sup> See *T.H.*, 59 ECAB 388 (2008). See also *Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *Id.* See also *Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *Id.* See also *Gary J. Watling*, 52 ECAB 278 (2001).

referred to this report but found that it had not been signed by a physician. Although this report does not explain how the employment incident caused her diagnosed condition, it strongly suggests and supports a relationship between the employment incident and her left shoulder condition.

The Board finds that, while Dr. Cooper's report is not completely rationalized, it is consistent in indicating that appellant sustained a left shoulder condition, is diagnosed by a physician, and is reasonably contemporaneous to the accepted incident.<sup>9</sup> Although the report is not sufficient to meet appellant's burden of proof to establish a claim, it is sufficient to require OWCP to further develop the medical evidence and the case record.<sup>10</sup>

Proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter.<sup>11</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>12</sup> Thus, the Board will remand the case to OWCP for further development to obtain a rationalized 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 November 1, 2011, as alleged.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.<sup>13</sup>

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<sup>9</sup> See *E.J.*, Docket No. 09-1481 (issued February 19, 2010).

<sup>10</sup> *Id.*

<sup>11</sup> See *Vanessa Young*, 55 ECAB 575 (2004).

<sup>12</sup> See *Richard E. Simpson*, 55 ECAB 490 (2004).

<sup>13</sup> In light of the Board's disposition of the performance of duty issue, the second issue of whether OWCP properly denied appellant's request for reconsideration is rendered moot. See *Sharon Edwards*, 56 ECAB 749 (2005).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 7 and March 29, 2012 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded to OWCP for further action consistent with this decision of the Board.

Issued: January 8, 2013  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board