

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

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**D.T., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Dickson, TN, Employer**

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**Docket No. 13-832  
Issued: June 18, 2013**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Alternate Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On February 26, 2013 appellant filed a timely appeal from the January 25, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP), which denied compensation for intermittent disability. 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.

**ISSUE**

The issue is whether appellant's intermittent disability during the period January 14 to February 10, 2012 was causally related to her July 10, 2008 employment injury.

**FACTUAL HISTORY**

This case was previously before the Board. In a June 15, 2011 decision, the Board affirmed a July 30, 2010 OWCP decision finding that it properly denied appellant's June 25,

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

2010 request for reconsideration.<sup>2</sup> The Board found that appellant's request did not satisfy the criteria for obtaining a merit review of her case.<sup>3</sup> The facts and history of the case up to that point are hereby incorporated by reference. The facts relevant to this appeal are set forth below.

On July 10, 2008 appellant, then a 36-year-old rural carrier associate, sustained an injury in the performance of duty when she pulled her vehicle up to a mailbox, opened the lid to place mail in the box and was startled when a bird flew out from the newspaper holder. She jerked her arm and struck the back side of it on the vehicle door. Appellant did not stop work at that time. OWCP accepted her claim for right elbow contusion and sprain of the right shoulder and upper arm. It later expanded its acceptance to include right rotator cuff tear and impingement. Appellant received disability compensation for four hours on May 28, 2009 and from June 15 to 18, 2009.

On February 10, 2012 appellant claimed compensation for 18.91 hours of intermittent disability during the period January 28 to February 10, 2012.

On January 31, 2012 appellant saw Dr. Charles R. Kaelin, an attending Board-certified orthopedic surgeon, for follow up of her right rotator cuff tear and tendinitis. Dr. Kaelin examined her and found her unchanged. He noted: "There is some question as to whether this latest episode was a new injury or exacerbation of the prior injury. Pathognomonically, this is nearly impossible to ascertain." Appellant appeared to be doing well with her present route with the exception of occasional issues with the height variances of mailboxes. Dr. Kaelin released her to regular duty three days a week with alternating days off. Appellant was to return in one month.

Appellant also received physical therapy on January 31, 2012. The therapist noted that she "reinjured" her right shoulder when someone at work punched her in March 2011. Finding that appellant continued to present with limitations, the therapist recommended continued therapy once a week to build endurance for exercise activity.

Appellant confirmed to OWCP that on March 19, 2011 she was working full-time full duty when a coworker punched her in the same place as her July 10, 2008 right shoulder injury. OWCP advised that she would have to provide medical evidence to substantiate that the disability for which she claimed compensation was caused by the July 10, 2008 work injury, after a return to full-time full duty with no issues, and not by what happened on March 19, 2011.

In an April 2, 2012 decision, OWCP denied appellant's February 10, 2012 claim for compensation. It found that the evidence failed to support disability due to the accepted work injury of July 10, 2008.

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<sup>2</sup> Docket No. 10-2218 (issued June 15, 2011).

<sup>3</sup> See 20 C.F.R. § 10.606. A request for reconsideration, including any supporting documents, must be in writing and set forth arguments and contain evidence that either: (1) establishes that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.

Appellant sought reconsideration. On November 2, 2012 Dr. Kaelin advised: “It appears that the most recent incident at work caused an aggravation of her original injury for which she has undergone care.” He later identified an “injury of March 19, 2011.” In October 2012 Dr. Kaelin added: “It appears that [appellant’s] continued complaint of right shoulder pain relates to the original injury. Appellant had the more recent onset of pain moving her platform at work. Absent any other history, it appears the most likely association again would be that of arising out of the injury prior.”

On November 26, 2012 Dr. Kaelin related appellant’s shoulder problem to something that occurred on June 11, 2012: “[Appellant] apparently took a pretty big tumble at work down some stairs at an address during delivery of mail. She even went to the emergency room with a multitude of x-rays. Today, however, [appellant] is here for her right shoulder.”

An October 18, 2011 physical therapy note indicated that appellant complained of right shoulder pain “after being hit at work.”

In a January 25, 2013 decision, OWCP reviewed the merits of appellant’s case and denied modification of its prior decision. It found that the medical evidence did not address the issue to be decided or include a physician’s reasoned medical opinion on whether the disability for which she claimed compensation was causally related to the original injury of July 10, 2008.

On appeal, appellant noted that on March 19, 2011 a coworker punched her in the right arm, which caused pain. She notified her supervisor and was instructed to seek medical attention from the orthopedic surgeon who initially treated her.

### **LEGAL PRECEDENT**

FECA provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> A claimant seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the evidence,<sup>5</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>6</sup>

It is not sufficient for the claimant to establish merely that she has disability for work. She must establish that her disability is causally related to the accepted employment injury. The claimant must submit a rationalized medical opinion that supports a causal connection between her current disabling condition and the employment injury. The medical opinion must be based on a complete factual and medical background with an accurate history of the employment injury

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<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

<sup>6</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

and must explain from a medical perspective how the current disabling condition is related to the injury.<sup>7</sup>

### ANALYSIS

OWCP has accepted that appellant sustained a right shoulder injury in the performance of duty on July 10, 2008. On that day, as appellant was delivering mail, a bird startled her by flying out of a newspaper holder. She jerked her arm and hit the backside of it on the vehicle door.

On February 10, 2012 appellant claimed 18.91 hours of compensation for intermittent disability during the period January 28 to February 10, 2012. It is therefore her burden to establish that this disability for work was causally related to the events of July 10, 2008.

Appellant has not met her burden. When it became clear that she attributed her current shoulder pain to being punched by a coworker on March 19, 2011, OWCP properly notified her that she would have to provide medical evidence to substantiate that the disability for which she claimed compensation was caused by the July 10, 2008 work injury and was not due to what happened on March 19, 2011.

It was the opinion of Dr. Kaelin, the attending orthopedic surgeon, that “the most recent incident at work” appeared to aggravate appellant’s original injury. He did not describe this most recent incident at work, but he concluded that absent any other history, it appeared the most likely association would be that arising out of the original injury.

The Board finds that Dr. Kaelin’s opinion is not well reasoned. Dr. Kaelin acknowledged other histories. After returning to work full time and full duty, appellant complained of right shoulder pain after a coworker punched her on March 19, 2011. She reported the onset of pain after moving her platform at work. Appellant apparently fell down some stairs at work. It appears something happened on June 11, 2012. The record is not clear that appellant filed claims regarding these incidents.

In this case, appellant’s burden is to establish that the disability for which she claims compensation was a result of her July 10, 2008 injury. Dr. Kaelin did not explain how this injury caused disability and not the result of a new injury or onset, such as being punched by a coworker on March 19, 2011 or moving her platform at work or taking a fall down the stairs.

Medical conclusions based on inaccurate or incomplete histories are of little probative value.<sup>8</sup> Medical conclusions unsupported by rationale are also of little probative value.<sup>9</sup>

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<sup>7</sup> *John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

<sup>8</sup> *James A. Wyrick*, 31 ECAB 1805 (1980) (physician’s report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

<sup>9</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

Dr. Kaelin did not offer a well-rationalized discussion of causal relationship based on a complete factual and medical history or address the particular hours claimed: 18.91 hours of intermittent disability for work during the period January 28 to February 10, 2012. The Board finds that his opinion is of little weight and is insufficient to discharge appellant's burden of proof. Accordingly, the Board will affirm OWCP's January 25, 2013 decision denying her claim for intermittent wage loss.

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.

Appellant explains to the Board that on March 19, 2011 a coworker punched her in the right arm, which caused her pain. As this was a new and independent work incident, any medical condition or disability resulting therefrom must be addressed in the context of a new injury, for which she should file a new claim.

### **CONCLUSION**

The Board finds that appellant has not met her burden to establish that her intermittent disability during the period January 14 to February 10, 2012 was causally related to her July 10, 2008 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 18, 2013  
Washington, DC

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

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

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