



## **FACTUAL HISTORY**

On April 26, 2012 appellant, then a 48-year-old telephone service representative, filed a traumatic injury claim (Form CA-1) alleging that on April 23, 2012 she sustained an injury when she pushed on a door that was opening slowly. Appellant stated that she felt a pull under her left breast and felt pain. The reverse side of the claim form indicated that appellant stopped working on April 24, 2012.

Appellant submitted a Form CA-16 (authorization for treatment), with the physician's portion of the form dated April 24, 2012 and completed by Dr. Suresh Patel, a Board-certified internist, who reported a history of injury that appellant hurt the left side of the chest wall trying to open a bathroom door on April 23, 2012. Dr. Patel diagnosed atypical chest pain and checked a box "yes" that the condition was caused or aggravated by employment. He submitted notes dated April 24, May 4 and 18 and June 8, 2012 indicating that appellant remained off work due to chest pain.

By letter dated May 14, 2012, OWCP advised appellant of the need to submit a complete medical report that included a physician's opinion supported by medical explanation, as to how the work incident caused or aggravated a medical condition. In a CA-20 (attending physician's report) dated June 8, 2012, Dr. Patel provided a history that appellant hurt her chest while trying to open a bathroom door and diagnosed chest pain.<sup>3</sup> He again checked a box "yes" on causal relationship with employment.

By decision dated June 14, 2012, OWCP denied the claim for compensation. It found the incident occurred as alleged, but the medical evidence was insufficient to establish the claim.

On July 6, 2012 appellant requested reconsideration of the claim. She stated that she had pulled a muscle that was still painful. As to medical evidence, appellant submitted narrative reports dated April 24, May 4 and 18, June 8 and 22, 2012. The April 24, 2012 report stated that appellant's chief complaint was that she hurt the left side of the anterior lower chest while trying to open a bathroom door at work. Dr. Patel provided results on examination and diagnosed atypical chest pain. In the June 22, 2012 report, Dr. Patel also diagnosed crush injury of the left chest wall.

In a decision dated October 4, 2012, OWCP found that the application for reconsideration was insufficient to warrant merit review of the claim for compensation.

## **LEGAL PRECEDENT -- ISSUE 1**

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."<sup>4</sup> The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the

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<sup>3</sup> The report is difficult to read with respect to the diagnosis. The ICD-9 (international classification of diseases, ninth revision) code provided was 786.59, which is "other chest pain."

<sup>4</sup> 5 U.S.C. § 8102(a).

commonly found requisite in workers' compensation law of "arising out of and in the course of employment."<sup>5</sup> An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.<sup>6</sup> In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury and generally this can be established only by medical evidence.<sup>7</sup>

OWCP's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.<sup>8</sup> In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.<sup>9</sup>

Rationalized medical opinion evidence is medical evidence that includes a physician's opinion that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

In the present case OWCP accepted that an incident occurred as alleged on April 23, 2012, but the issue is whether the medical evidence is sufficient to establish causal relationship between a diagnosed condition and the employment incident. To constitute rationalized medical evidence, there must be a complete background, a firm diagnosis and an opinion on causal relationship that is supported by medical rationale. Dr. Patel provides only a brief history in form reports that appellant was trying to open a door, without providing any

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<sup>5</sup> *Valerie C. Boward*, 50 ECAB 126 (1998).

<sup>6</sup> *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

<sup>7</sup> *See John J. Carlone*, 41 ECAB 354, 357 (1989).

<sup>8</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3 (July 2000).

<sup>9</sup> *Id.*

<sup>10</sup> *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

additional detail.<sup>11</sup> The diagnosis was atypical chest pain, without further explanation. In addition, the opinion on causal relationship consisted of checking a box “yes” as to causal relationship with employment.

The Board has held that when a physician’s opinion consists of only the checking of a box, without further explanation or detail, it is of diminished probative value.<sup>12</sup> Dr. Patel did not provide any medical rationale to support his opinion on causal relationship. He continued to submit notes indicating that appellant was disabled, but he did not provide a rationalized medical opinion, based on a complete background, on causal relationship between a diagnosed condition and the April 23, 2012 employment incident.

It is appellant’s burden of proof to submit the necessary medical evidence to establish the claim. She was advised of the need to submit probative medical evidence in the May 14, 2012 OWCP letter. For the reasons noted above, appellant did not meet her burden in this case.

On appeal, appellant asserts that she did suffer a painful injury at work. The issue, however, is a medical issue and an employment injury must be established by probative medical evidence. The evidence of record is not sufficient to establish an employment injury. Appellant may submit new evidence or argument with a written application 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.

### **LEGAL PRECEDENT -- ISSUE 2**

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,<sup>13</sup> OWCP’s regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either: “(i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent evidence not previously considered by OWCP.”<sup>14</sup> Section 10.608(b) states that any application for review that does not meet at least one of the

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<sup>11</sup> The Board notes that where an employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee’s claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *Tracey P. Spillane*, 54 ECAB 608 (2003). The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c). The record is silent as to whether OWCP paid for the cost of appellant’s examination or treatment for the period noted on the form.

<sup>12</sup> *M.F.*, Docket No. 12-1501 (issued December 11, 2012); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>13</sup> 5 U.S.C. § 8128(a) (providing that “[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application”).

<sup>14</sup> 20 C.F.R. § 10.606(b)(2).

requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.<sup>15</sup>

### **ANALYSIS -- ISSUE 2**

Appellant requested reconsideration and stated that she was still in pain and had pulled a muscle at work. The application for reconsideration did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP.

The underlying issue in the case was a medical issue as to causal relationship between a medical condition and the April 23, 2012 employment incident. While appellant does not have to meet her burden of proof to require OWCP to reopen the claim, she must submit relevant and pertinent evidence not previously considered by OWCP. The narrative reports from Dr. Patel were not previously considered, but they do not provide any new and relevant evidence on the medical issue presented. Dr. Patel did not provide any additional history of injury or provide any new evidence on causal relationship. The June 22, 2012 report contained a new diagnosis of a crush injury, but without any additional explanation as to its relationship with the April 23, 2012 employment incident, it is not new and relevant evidence.

The Board finds that appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2). Appellant did not show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or submit relevant and pertinent evidence not previously considered by OWCP.

### **CONCLUSION**

The Board finds that appellant has not established an injury in the performance of duty on April 23, 2012. The Board further finds that OWCP properly denied appellant's application for reconsideration with merit review of the claim for compensation.

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<sup>15</sup> 20 C.F.R. § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated October 4 and June 14, 2012 are affirmed.

Issued: March 12, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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