



## **FACTUAL HISTORY**

On August 13, 2010 appellant, then a 51-year-old mail processor, filed a traumatic injury claim alleging on August 2, 2010 a cage gate fell on her neck, shoulders and back while in the performance of her federal duties. She sought treatment at the emergency room on August 17, 2010 and received a diagnosis of acute back pain from a nurse practitioner. In a note dated August 17, 2010, the emergency department noted that appellant complained of pain in her posterior cervical area, right trapezius, right scapular area, right subscapular area, right mid back and right lower back. Appellant stated that she was injured on the job on August 2, 2010 when a large metal cage fell from above her onto her neck and back. Dr. Syed Tariq, a Board-certified internist, noted that she had chronic pain for which she took medication. He provided differential diagnoses of arthritis, myofascial strain, pulled muscle, sciatica and spinal injury.

On March 18, 2011 Dr. A.G. Lipede, a surgeon, diagnosed serious work-related neck to left hand condition.

On August 29, 2011 appellant filed a recurrence of disability alleging on February 17, 2011 that she sustained a recurrence of disability due to her accepted September 10, 2005 and August 2, 2010 employment injuries. She stated that she returned to limited-duty work following her employment injury with a sit down job and lifting restriction of 10 pounds. Appellant was also restricted in her pushing and pulling and machine work. She stated on February 15, 2011 that her supervisor instructed her to label the machine for the casuals. Appellant stated that she attempted to perform this task for 15 minutes and developed neck pain.

Appellant submitted a narrative statement and alleged that she had conditions in her feet, legs, neck, arm, left hand, right shoulder and lower back. She attributed her condition to her work at the employing establishment.

In a letter dated September 9, 2011, OWCP stated that appellant's August 2, 2010 claim had been administratively approved for a limited amount of medical expenses. It informed her that a decision would be made on her recurrence claim once her initial claim was adjudicated. OWCP requested additional medical evidence in support of appellant's August 2, 2010 traumatic injury claim. It informed her by letter dated October 7, 2011 that her claimed recurrence of disability dated August 29, 2011 would be developed as a new traumatic injury occurring on February 15, 2011 under a separate claim number.<sup>3</sup>

By decision dated October 19, 2011, OWCP denied appellant's August 2, 2010 traumatic injury claim finding that she had not submitted medical evidence of a diagnosed condition resulting from this incident. It noted that back pain was not an acceptable diagnosed condition.

Appellant requested reconsideration on September 12, 2012. She submitted responses to OWCP's request for additional factual information and described the falling of the cage gate. Appellant also submitted additional medical evidence. Cervical myelogram and computerized tomography (CT) dated June 3, 2011 demonstrated disc herniation at C6-7 and moderate neural foraminal stenosis. A magnetic resonance imaging (MRI) scan dated July 18, 2008

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<sup>3</sup> OWCP assigned claim file number xxxxxx853 to this new traumatic injury.

demonstrated mild cervical spondylosis with no large disc protrusion. A MRI scan dated March 5, 2011 demonstrated nerve encroachment due to mild disc osteophyte complex at C6-7.

Dr. Lawrence Kinsella, an internist, completed a report on September 12, 2011 and diagnosed small fiber neuropathy, neuropathic pain and C6-7 herniated disc with foraminal encroachment. Dr. Brett A. Taylor, a Board-certified orthopedic surgeon, completed a report dated August 24, 2011 and noted appellant's six-year history of back and neck pain. Appellant described two previous work injuries. She noted that in 2005 she was pushing a 1,000 pound metal container that rolled back on her resulting in bilateral Achilles repairs and in August 2010 a metal cage fell on her neck and shoulder. Dr. Taylor reviewed the CT and other diagnostic studies which demonstrated disc herniation at C6-7 but no cervical radiculopathy.

Dr. Thomas K. Lee, a Board-certified orthopedic surgeon, completed a report on April 12, 2012 and described appellant's employment duties on February 15, 2011. Appellant also reported her 2005 pushing injury. Dr. Lee diagnosed left C6-7 herniated nucleus pulposus. In reports dated May 3, 2012, he mentioned appellant's 2010 cage injury and attributed her herniated disc to her February 15, 2011 traumatic injury.

By decision dated December 19, 2012, OWCP reviewed the merits of appellant's claim and modified the prior decision, finding that she had filed a timely claim and had submitted evidence of a medical condition which she attributed to her incident on August 2, 2010. However, it further found that she had not submitted the necessary medical opinion evidence to establish a causal relationship between her diagnosed condition and her accepted employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including the fact that the individual is an "employee of the United States" within the meaning of FECA and 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> 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.<sup>6</sup>

OWCP defines 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."<sup>7</sup> To determine

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<sup>4</sup> 5 U.S.C. §§ 8101-1893.

<sup>5</sup> *Kathryn Haggerty*, 45 ECAB 383, 388 (1994); *Elaine Pendleton*, 41 ECAB 1143 (1989).

<sup>6</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>7</sup> 20 C.F.R. § 10.5(ee).

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.<sup>8</sup> 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.<sup>9</sup>

### **ANALYSIS**

Appellant alleged on August 2, 2010 that the top of a cage fell on her injuring her neck, back and shoulders in the performance of duty. She has submitted medical evidence diagnosing a herniated disc at C6-7. However, the Board finds that appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between her diagnosed condition and her accepted employment incident.

In support of her claim for neck and back injury, appellant submitted reports from Drs. Kinsella, Taylor and Lee. Each of these physicians diagnosed herniated disc at C6-7, however, none of the physicians explained the relationship of this condition to appellant’s work injuries. Dr. Taylor noted in 2011 appellant’s six-year history of back and neck pain and two work injuries. He did not opine whether her herniated disc was caused by or contributed to either of her work injuries. Without an opinion on the relationship between appellant’s diagnosed condition and her work incident, this report is insufficient to meet her burden of proof.

Dr. Lee also diagnosed C6-7 disc herniation and mentioned appellant’s claimed August 2, 2010 cage injury and 2005 accepted pushing injury, as well as her alleged 2011 traumatic injury. He, however, attributed her herniated disc to her February 15, 2011 traumatic injury which, as noted above, is under a separate OWCP file number, rather than to the August 2, 2010 employment incident.

As appellant has not submitted the necessary medical opinion evidence to establish a causal relationship between her diagnosed condition and her August 2, 2010 employment incident, she has failed to meet her burden of proof in establishing a traumatic injury claim.

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 submit the necessary medical evidence to establish her traumatic injury claim.

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<sup>8</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *J.Z.*, 58 ECAB 529 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 19, 2012 decision Office of Workers' Compensation Programs is affirmed.

Issued: November 13, 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