



## **FACTUAL HISTORY**

On October 23, 2012 appellant, then a 56-year-old mail processing clerk, filed a traumatic injury claim alleging that on October 10, 2012 she sustained a right wrist contusion when she was struck by an object thrown by another employee. She stopped work on October 10, 2012. The employing establishment controverted the claim, noting that appellant alleged that a coworker placed two thick parcels on her hand but that the coworker denied the allegation.

In a report dated October 11, 2012, Dr. Carlos Garrett, a Board-certified internist, related that appellant described her injury as occurring the day before when a coworker threw “two thick pieces [of] Express Mail on top of [her] right hand and wrist...” On examination he found no erythema, ecchymosis, masses, swelling, deformity or atrophy but tenderness over the extensor surface of the wrist. Dr. Garrett found that appellant had a negative Phalen’s test, Tinel’s sign and Finkelstein’s maneuver. He diagnosed a hand contusion and noted that x-rays were normal.

In a statement dated October 12, 2012, John R. Strang, a coworker, related that on October 10, 2012 he took two flats to give appellant but that she did not respond when he told her that he had mail.<sup>3</sup> He put the two flats behind her and walked away. Mr. Strang heard the mail hit the floor and saw appellant leaving. Appellant did not indicate that she was hurt.

In a report dated October 12, 2012, Dr. Debra K. Cooper, an osteopath, discussed appellant’s assertion that two days earlier a coworker threw a package that hit her right hand. She described other “workplace issues” with the coworker and related that appellant continued to experience right wrist pain. On examination Dr. Cooper found mild swelling across the dorsum of the right hand with full range of motion and no loss of strength. She diagnosed a hand contusion and sprain/strain of the right hand and wrist. Dr. Cooper stated that appellant’s case was “complicated by personnel concerns” but that she did “have some objective findings in her wrist exam[ination].” In an accompanying form report, she related that appellant’s claim appeared to qualify as work related and released her to return to work with restrictions.

On October 17, 2012 Dr. Michael J. Roberts, an osteopath, reviewed appellant’s complaints of right wrist pain without numbness, tingling or weakness. On examination he found full range of motion and strength of the right wrist with no loss of sensation. Dr. Roberts diagnosed a wrist and hand sprain/strain and wrist contusion. He advised that appellant’s condition appeared employment related and that she could work with restrictions. Dr. Roberts provided a similar progress report dated October 21, 2012.

On October 26, 2012 Dr. Alesia Wagner, an osteopath specializing in family medicine, found a loss of sensation to light touch and pinprick of the right wrist with a negative Phalen’s test and Tinel’s sign but positive Finkelstein’s test. She referred appellant for electrodiagnostic studies and chiropractic treatment and asserted that her condition appeared to be due to her employment.

---

<sup>3</sup> On October 24, 2012, Leslie Y. Kosaka, a supervisor, indicated that appellant initially told her on October 11, 2012 that Mr. Strang hit her with Express Mail on her hand but later stated that two pieces of mail had been laid on her hand while she was hanging mail sacks.

On October 31, 2012 Dr. Leslie M. Kalman, who specializes in family medicine, diagnosed a right wrist and hand sprain/strain and a hand and wrist contusion. She found no abnormalities of the right upper extremity and opined that appellant could work with restrictions.

By letter dated November 2, 2012, OWCP requested that appellant submit additional factual and medical information, including a detailed report from her attending physician addressing the causal relationship between any diagnosed condition and employment factors.

On November 13, 2012 Dr. Kalman requested authorization for diagnostic studies due to appellant's complaints of numbness in the right fingers and swelling of the right hand. On examination she found swelling of the right wrist without other abnormalities. Dr. Kalman determined that appellant could work with restrictions and that her condition appeared work related.

In response to OWCP's request for additional information, on November 13, 2012 appellant related that she reported the October 10, 2012 incident with the coworker to the police. She related that on October 10, 2012 she was hanging empty Express Mail sacks on hooks when Mr. Strang threw Express Mail parcels onto the top of her hand, causing her wrist to collapse onto a bar rack.<sup>4</sup>

By decision dated December 5, 2012, OWCP denied appellant's claim after finding that she had not submitted sufficient factual evidence to establish that the October 10, 2012 incident occurred at the time, place and in the manner alleged.

In a progress report dated November 27, 2012, Dr. Cooper noted that appellant continued to experience numbness and tingling in her right hand. On examination she found a positive Phalen's test and Tinel's sign on the right. Dr. Cooper diagnosed a right wrist contusion and sprain/strain and a hand contusion and sprain/strain and advised that the conditions seemed related to employment. In a progress report dated December 4, 2012, Dr. Roberts diagnosed right hand tenosynovitis, a lesion of the median nerve, right hand and finger sprain/strain and a right hand contusion. He found that the claim "appeared to qualify as work related."<sup>5</sup>

On December 27, 2012 appellant requested an oral hearing before an OWCP hearing representative. At the telephone hearing, held on May 8, 2013, she related that she did not inform her supervisor immediately of her injury because she had previously complained about Mr. Strang and nothing was done. The hearing representative noted that initial medical evaluations did not describe significant objective findings and advised appellant to submit additional medical evidence.

---

<sup>4</sup> In a statement dated October 24, 2012, Albert Winbush related that on October 10, 2012 appellant asked to leave early but did not indicate that she was injured. On October 24, 2012 Ms. Kosaka indicated that appellant initially told her on October 11, 2012 that she had been hit by Express Mail but later stated that two pieces of mail had been laid on her hand.

<sup>5</sup> On December 12, 2012 Dr. Barry Buffman, a urologist, found a negative Tinel's sign and Phalen's test on the right and diagnosed wrist and hand contusions and sprain/strains that appeared employment related. On December 18, 2012 Dr. Kalman discharged appellant from care due to the denial of her claim.

On April 29, 2013 Dr. Behzad Emad, a Board-certified physiatrist, diagnosed a tendinoligamentous injury of the right elbow and wrist, right elbow lateral epicondylitis and cubital tunnel syndrome, right carpal tunnel syndrome, right wrist derangement, chronic pain and disability and an adjustment reaction. He stated, “I attribute [appellant’s] present right elbow and wrist condition and need for treatment to the industrial injury of October 10, 2012 based on [her] history, subjective complaints, objective facts and information available to me at this time.” Dr. Emad submitted substantially similar progress reports on May 9 and 13, June 3 and July 1, 2013.<sup>6</sup>

By decision dated August 1, 2013, an OWCP hearing representative affirmed the December 5, 2012 decision as modified to reflect that appellant had established that she was struck on the wrist by falling parcels on October 10, 2012. He found that, while it was not established that Mr. Strang threw mail at appellant, her actions in reporting the injury and seeking medical treatment the following day was sufficient to show that two parcels fell and struck her on that date. The hearing representative determined, however, that the medical evidence was insufficient to establish that she sustained a diagnosed condition as a result of the October 10, 2012 employment incident.

On appeal, appellant contends that OWCP should accept that she sustained a work injury and asserts that she continues to experience problems due to her injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>7</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 filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>8</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>9</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.<sup>10</sup> Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition

---

<sup>6</sup> In a report dated May 20, 2013, Dr. Cooper summarized the medical treatment appellant received from October 11 to December 18, 2012. She related that diagnostic studies would have provided a more accurate idea of her condition.

<sup>7</sup> See *supra* note 2.

<sup>8</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>9</sup> See *Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>10</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

for which compensation is claimed.<sup>11</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>12</sup>

### ANALYSIS

Appellant filed a claim alleging that on October 10, 2012 a coworker threw two mail parcels onto her right wrist. The coworker related that he put two mail flats behind her and then heard them hit the floor as he was walking away. OWCP accepted that appellant was struck on the right wrist by two pieces of mail on October 10, 2012 although the exact mechanism of injury was not established. Appellant informed the employing establishment of the incident and sought medical treatment the following day. The record does not contain inconsistencies sufficient to cast doubt on her allegation that on October 10, 2012 she was struck on the right wrist by two packs of mail.<sup>13</sup> The issue, consequently, is whether appellant sustained a compensable injury as a result of the October 10, 2012 employment incident.

On October 11, 2012 Dr. Garrett found no erythema, ecchymosis, masses, swelling, deformity and atrophy of the right wrist. He further determined that appellant had a negative Phalen's test, Tinel's sign and Finkelstein's maneuver and normal x-rays. Dr. Garrett noted that she complained of tenderness over the extensor surface of the wrist. He diagnosed a hand contusion. Dr. Garrett did not specifically address the cause of her condition. In a simple traumatic injury, such as a knife cut that, is reported to and seen by a physician promptly, there is no need to obtain a rationalized explanation of causal relationship.<sup>14</sup> In this case, however, Dr. Garrett provided no positive examination findings supporting his diagnosis of a wrist contusion. Given the lack of objective findings the day following the injury, additional explanation is required to support that appellant sustained a wrist contusion due to the October 10, 2012 work incident.

On October 12, 2012 Dr. Cooper discussed appellant's contention that a coworker threw a package that hit her right hand and her assertion that she had experienced other difficulties with the same coworker. On examination the physician found mild swelling of the dorsum of the right hand as an objective finding. Dr. Cooper concluded that appellant's "claim appears to qualify as work related" and that she could perform modified employment. Her conclusion, however, is couched in speculative terms. Medical opinions that are speculative or equivocal in character are of diminished probative value.<sup>15</sup>

---

<sup>11</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>12</sup> *Id.*

<sup>13</sup> *See Betty J. Smith*, 54 ECAB 174 (2002) (an employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim).

<sup>14</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating the Medical Evidence*, Chapter 2.810.5(c) (September 2010); *see also R.R.*, Docket No. 06-1975 (issued January 18, 2007).

<sup>15</sup> *See D.D.*, 57 ECAB 710 (2006).

On October 17 and 25, 2012 Dr. Roberts found that appellant had no loss of motion, strength or sensation of the right wrist. He diagnosed a wrist contusion and hand sprain/strain and determined that her condition appeared employment related. On October 26, 2012 Dr. Wagner referred appellant for diagnostic tests but asserted that her condition appeared to be due to her employment. On October 31, 2012 Dr. Kalman diagnosed wrist contusion and hand and wrist sprain/strain. She found no right upper extremity abnormalities on examination. Dr. Kalman also opined that appellant's condition appeared work related. The opinions of Dr. Roberts, Dr. Wagner and Dr. Kalman, however, are speculative in nature regarding causation and thus, as discussed, of little probative value.<sup>16</sup> Further, neither physician provided positive objective findings in support of the diagnosed conditions.

On November 13, 2012 Dr. Kalman noted that appellant complained of swelling in her right hand and numbness of the right fingers. On examination the physician found swelling of the right wrist but no other abnormalities. Dr. Kalman advised that appellant's condition appeared employment related. As discussed, however, the Board has held that medical opinions which are speculative or equivocal in character have little probative value.<sup>17</sup>

In a progress report dated November 27, 2012, Dr. Cooper found a positive Tinel's sign and Phalen's test on the right. She diagnosed a right wrist and hand contusion and sprain, which seemed due to employment. On December 4, 2012 Dr. Roberts diagnosed tenosynovitis of the right hand and a median nerve lesion, right hand and finger strain and a right hand contusion, which "appeared to qualify as work related." The opinions of Dr. Cooper and Dr. Roberts that the diagnosed conditions appeared to be work related are couched in speculative terms and thus of diminished probative value.<sup>18</sup> Further, neither physician provided any rationale regarding causation. A mere conclusion without the necessary rationale explaining how and why the physician believes that a claimant's accepted exposure could result in a diagnosed condition is not sufficient to meet a claimant's burden of proof.<sup>19</sup>

In reports dated April through July 1, 2013, Dr. Emad diagnosed a tendinoligamentous injury of the right elbow and wrist, right elbow lateral epicondylitis and cubital tunnel syndrome, right carpal tunnel syndrome, right wrist derangement, chronic pain and disability and an adjustment reaction. He attributed appellant's right elbow and wrist conditions to her October 10, 2012 work injury based on her history and the subjective and objective findings. Dr. Emad's opinion on causal relationship is of limited probative value as he did not provide adequate medical rationale in support of his conclusions.<sup>20</sup> He did not describe appellant's injury in any detail or explain how being struck by two mail packets caused or aggravated conditions such as carpal tunnel syndrome and elbow epicondylitis. Such rationale is particularly necessary given the minimal objective findings contemporaneous to the injury.

---

<sup>16</sup> *Id.*

<sup>17</sup> *L.R. (E.R.)*, 58 ECAB 369 (2007); *Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>18</sup> *Id.*

<sup>19</sup> *See Beverly A. Spencer*, 55 ECAB 501 (2004).

<sup>20</sup> *See S.S.*, 59 ECAB 315 (2008); *William C. Thomas*, 45 ECAB 591 (1994).

On appeal, appellant argues that OWCP should accept that she sustained an employment injury. An award of compensation, however, may not be based on surmise, conjecture, speculation or upon her own belief that there is a causal relationship between her claimed condition and her employment.<sup>21</sup> Appellant must submit a physician's report in which the physician reviews those factors of employment identified by her as causing his condition and, taking these factors into consideration as well as findings upon examination and the medical history, explain how employment factors caused or aggravated any diagnosed condition and present medical rationale in support of his or her opinion.<sup>22</sup> She failed to submit such evidence and therefore failed to discharge her burden of proof.

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 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not established that she sustained an injury on October 10, 2012 in the performance of duty, as alleged.

---

<sup>21</sup> *D.E.*, 58 ECAB 448 (2007); *George H. Clark*, 56 ECAB 162 (2004); *Patricia J. Glenn*, 53 ECAB 159 (2001).

<sup>22</sup> *Supra* note 15 at 734 (2006); *Robert Broome*, 55 ECAB 339 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 1, 2013 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2014  
Washington, DC

Patricia Howard Fitzgerald, Acting Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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