

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

D.T., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Freeland, PA, Employer

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**Docket No. 13-1773
Issued: January 7, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On July 22, 2013 appellant filed a timely appeal from a February 21, 2013 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 established that he sustained a left elbow injury in the performance of duty as alleged.

FACTUAL HISTORY

On January 7, 2013 appellant, then a 46-year-old carrier, filed a traumatic injury claim (Form CA-1) asserting that on December 31, 2012 he sustained a left elbow injury when he

¹ 5 U.S.C. § 8101 *et seq.*

slipped and fell on icy steps while delivering mail. He did not stop work at the time of the injury.

In a January 18, 2013 letter, OWCP advised appellant of the additional evidence needed to establish his claim. It requested medical evidence from his physician explaining how and why the December 31, 2012 incident would have caused the claimed left elbow injury. Appellant was afforded 30 days to submit such evidence.

Appellant submitted a work status note dated January 7, 2013 from an urgent care clinic, signed by Megan O'Donovan, a physician's assistant, and reviewed and countersigned by Dr. Jean Paul Rommes, Board-certified in emergency medicine and family practice. They related appellant's account of striking his left elbow when he slipped on icy stairs on December 31, 2012, with an immediate onset of pain and swelling. On examination, there was tenderness at the left olecranon. X-rays of the left elbow were negative for fracture, avulsion, dislocation and soft tissue swelling. The clinicians diagnosed a left elbow contusion sustained on December 31, 2012 and released appellant to full duty.

On February 19, 2013 OWCP received a second medical report of the January 7, 2013 visit which reiterated the previous diagnosis of the physician's assistant report. This report was countersigned by Dr. Rommes.

By decision dated February 21, 2013, OWCP denied the claim on the grounds that causal relationship was not established. It found that the December 31, 2012 incident occurred as alleged. However, OWCP found that the January 7, 2013 report was not probative medical evidence as a physician's assistant is not a physician as defined under FECA. It further found that the January 7, 2013 report had not been "countersigned by a physician."

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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.³ 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.⁴

In order to determine whether an employee sustained a traumatic 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 that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish

² 5 U.S.C. § 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

that he or she actually experienced the employment incident that is alleged to have occurred.⁵ 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.⁶

ANALYSIS

Appellant claimed that he sustained a left elbow injury when he slipped and fell while delivering mail on December 31, 2012. OWCP accepted the December 31, 2012 incident as factual. In support of his claim, appellant submitted a January 7, 2013 report signed by Ms. O'Donovan, a physician's assistant, and reviewed and countersigned by Dr. Rommes, a physician Board-certified in emergency medicine and family practice received by OWCP on February 19, 2013. The report diagnosed a left elbow contusion due to the accepted December 31, 2012 slip and fall.

OWCP denied the claim, by decision dated February 21, 2013, finding that causal relationship was not established due to a lack of medical evidence. It found that the January 7, 2013 report was of no probative value as it was signed only by a physician's assistant and "not countersigned by a physician." OWCP was correct in noting that physician's assistants are not considered physicians under FECA and their opinions are of no probative value.⁷ Reports that are reviewed and countersigned by a physician do constitute probative medical evidence.⁸ In this case, the January 7, 2013 report of Ms. O'Donovan was reviewed and countersigned by Dr. Rommes, a Board-certified physician. The report is therefore competent medical evidence. The case will be remanded to OWCP for a review of the January 7, 2013 report. Following this and any other development deemed necessary, OWCP shall issue an appropriate merit decision in the case.

CONCLUSION

The Board finds that the case is not in posture for a decision. The case will be remanded for additional development.

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ 5 U.S.C. § 8101(2); *Richard E. Simpson*, 57 ECAB 668 (2006); *Vickey C. Randall*, 51 ECAB 357 (2000).

⁸ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 21, 2013 is set aside, and the case remanded for further action in accordance with this decision.

Issued: January 7, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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