

FACTUAL HISTORY

On December 19, 2012 appellant, then a 63-year-old medical support assistant, filed an occupational disease claim alleging injuries to her neck and left shoulder, arms and wrist due to her employment duties. She also noted swelling of her hands. Appellant alleged that this was due to 12-hour shifts lifting and filing and constantly using her hands and upper body.

By letter dated January 4, 2013, OWCP asked appellant to submit further information in support of her claim. It requested evidence that she actually experienced the employment factors alleged to have caused her injury and a physician's opinion as to how her employment activities caused or aggravated her medical condition.

In a January 23, 2013 radiology study of appellant's right shoulder, Dr. Marvin Van Hal, a Board-certified orthopedic surgeon, listed impressions of status post right shoulder surgery with postoperative change. In a progress report of the same date, he noted that appellant was having some difficulty with her abduction brace. Dr. Van Hal noted that he would start her on pendulum exercises, working with her wrist and elbow. He also advised that appellant was seen for follow up regarding her left shoulder. Dr. Van Hal listed a work incident/injury in May 2012 associated with her left shoulder. Appellant stated that her right shoulder had become so involved with its symptoms that she was having to do more work with her left shoulder. In addition, she indicated that she performed repetitive lifting, filing and overhead work with the right shoulder. Dr. Van Hal opined that her claim for a left shoulder injury should be accepted as she performed the same work with her left shoulder as the right and she had to overuse the left shoulder after problems with the right shoulder and trying to maintain her regular duty.

By decision dated March 18, 2013, OWCP found that appellant established the work duties as described. It denied her claim as the medical evidence was not sufficient to establish causal relationship.

On April 6, 2013 appellant requested reconsideration. She submitted a May 2, 2013 report from Dr. Van Hal who crossed out the date of injury, previously listed as November 1, 2007, and wrote May 1, 2012. Dr. Van Hal also changed the claim file number xxxxxx130 to reflect the current claim. He let stand his previously listed diagnoses of left shoulder impingement, sprain/stain left shoulder, upper arm and disorder of bursa and tendons in the shoulder region. Dr. Van Hal stated that to a reasonable degree of medical probability, appellant's work activities exacerbated and aggravated her underlying shoulder dysfunction. In a July 10, 2013 report, he listed the diagnosis of impingement disorder, left shoulder, with likely rotator cuff tear. Dr. Van Hal noted that she was not to work at the present time due to both of her shoulders, although the right shoulder appeared to be the predominate reason that she could not return to work.

By decision dated October 23, 2013, OWCP reviewed appellant's case on the merits and determined that her claim remained denied based on another basic element, stating, "[s]pecifically, your claim is denied as the evidence of file does not support fact of injury [f]actual."

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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 and/or specific condition for which compensation is claimed are causally related to the employment injury. 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.³

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 or exposure, which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁵

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action. In determining whether a *prima facie* case has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on a claimant's statements. The employee has not met this burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁶

ANALYSIS

The Board finds that appellant failed to establish that she sustained an employment injury in the performance of her duties as a medical support assistant.

Appellant must establish all of the elements of her claim. She must prove her employment as a federal employee, the time, place and in the manner of the injury, a resulting personal injury and that her injury arose in the performance of duty. In its October 23, 2013 decision, OWCP found that appellant did not establish that she actually experienced the employment incident or exposure, and accordingly denied her claim.

Appellant has not provided sufficient detail to establish that the alleged occupational exposure occurred as alleged.⁷ She alleged that she sustained injuries to her neck and left

³ *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁵ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁶ *T.B.*, Docket No. 13-1823 (issued March 20, 2014).

⁷ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997); see also *C.H.*, Docket No. 11-1843 (issued March 6, 2012).

shoulder, arm and wrist as a result of 12-hour shifts lifting and filing and constantly using her hands and upper body. Appellant did not provide a detailed explanation of her employment activities and how they related to her claim. She did not respond to the January 4, 2013 development letter or provide OWCP with the additional factual evidence requested. The Board finds that in the instant case, the record lacks evidence to establish the factual element of appellant's claim.

An award of compensation may not be based on surmise, conjecture or speculation. Because appellant did not submit sufficient evidence demonstrating the alleged occupational exposure actually occurred, she did not meet her burden of proof.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish an injury causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated October 23, 2013 is affirmed.

Issued: July 21, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

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