

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

K.A., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Nashville, TN, Employer**

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**Docket No. 14-213
Issued: May 7, 2014**

Appearances:

*Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On November 4, 2013 appellant, through her attorney, filed a timely appeal from a September 9, 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 met her burden of proof to establish a traumatic injury in the performance of duty on December 20, 2012.

FACTUAL HISTORY

On February 21, 2013 appellant, then a 56-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained injury on December 20, 2012 when a driver rear-ended her vehicle while she was stopped at a mailbox. She described her injury as lower

¹ 5 U.S.C. § 8101 *et seq.*

back and neck pain. Appellant's regular work hours were from 7:30 a.m. to 3:30 p.m. The employing establishment controverted her claim, stating that there was a motor vehicle incident on December 20, 2012, after which she complained of back pain only and visited a hospital. Appellant worked for the following two days after this incident. It also controverted continuation of pay on the basis that she had not submitted her claim within 30 days of the date of injury.

In a letter dated December 27, 2012, Dr. Rony Najjar, a Board-certified surgeon, stated that appellant had been admitted to a hospital on December 23, 2012 as the result of a motor vehicle collision and that the date of her discharge was unknown at that time.

In a note dated January 7, 2013, Dr. Najjar stated that appellant was unable to work until January 24, 2013. In a note dated January 24, 2013, he stated that she could return to light-duty work on February 4, 2013 and to full duty on February 25, 2013.

On March 6, 2013 the employing establishment explained its reasons for challenging appellant's claim. It noted that she had informed her supervisor on the third day after her accident that she was going to the emergency room and would not be available to work the next day, but did not relate this event to being rear-ended at a mailbox on December 20, 2012. On December 25, 2012 appellant's husband contacted her supervisor to state that appellant had surgery for a ruptured bladder, but he did not at that time relate the condition to the incident on December 20, 2012. On December 31, 2012 appellant requested a traumatic injury claim form and a copy of the incident report, which was sent to her on January 2, 2013. On January 8, 2013 her supervisor contacted her to inquire about the status of her claim and appellant told her that she did not have an on-the-job injury and would not complete the form. Appellant stated that she did not want forms for workers' compensation because her condition was not work related and requested Family and Medical Leave Act (FMLA) documents. On February 21, 2013 she delivered the traumatic injury claim form, stating to her supervisor that she had gotten bad information and wanted to file a workers' compensation claim. The employing establishment claimed that the medical information submitted by appellant did not establish that her ruptured bladder was related to the vehicle incident of December 20, 2012.

The employing establishment's letter was accompanied by a statement from appellant's supervisor, dated February 21, 2013, corroborating its account of events. It noted, additionally, that the employing establishment did not provide light-duty work to rural carriers for nonoccupational injuries and that it had not allowed appellant to return to work before she was released for full duty with no restrictions by her physician on February 25, 2013.

In an FMLA certification of health care provider for employee's serious health condition dated January 8, 2013, Dr. Najjar stated that appellant presented with abdominal pain, which he found to be the result of an acute bladder rupture. He noted that her condition commenced on December 23, 2012 and that its duration was eight weeks.

On March 8, 2013 OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It afforded her 30 days to submit this evidence. In response, appellant submitted an attorney authorization form dated March 23, 2013.

By decision dated April 12, 2013, OWCP denied appellant's claim. It found that she had not submitted sufficient evidence to establish that a medical condition had been diagnosed in connection with the claimed incident.

On April 22, 2013 appellant, through her attorney, requested a telephonic hearing before an OWCP hearing representative.

Appellant submitted hospital notes and diagnostic records dated from December 23, 2012 through April 26, 2013, prior to the hearing.

In a traffic crash report dated December 20, 2012, the responding officer stated that at 2:30 p.m. on this date appellant's vehicle, which had been stopped by a mailbox with a white strobe light activated on its roof, was struck in the rear by another vehicle. The striking vehicle had left 115 feet of skid marks prior to impact.

In a report dated December 23, 2012, Dr. Smita Shah, a Board-certified internist, stated that appellant had undergone a computerized axial tomography (CAT) scan, which revealed free fluid in the abdomen. She noted appellant's past medical history, which was significant for hyperlipidemia, peripheral arterial disease and cervical cancer. On examination, Dr. Shah found that appellant's abdomen was soft, but distended, with a severe, diffuse, ill-defined tenderness present and voluntary guarding.

On December 23, 2012 Dr. Richard R. Randall, a Board-certified surgeon, noted that appellant had abdominal pain of unclear etiology. He noted her prior medical history, which was significant for a tubal ligation, hysterectomy, cervical cancer, cardiovascular disease, heavy tobacco use and chronic pain. Dr. Randall stated that appellant had been admitted in May 2012 with acute abdominal pain, which resolved; and that she had undergone a colonoscopy in the past year. On examination, he noted that her abdomen was nontender and nondistended.

In a report dated December 23, 2012, Dr. Rinkesh Patel, a resident physician, stated that appellant had been involved in a motor vehicle incident three days prior and that she had neck and lower back pain. He noted that she presented with abdominal pain and she had a similar episode in May 2012, and she had transferred to another medical facility to rule out ischemic bowel disease. On examination, Dr. Patel noted a soft abdomen with diffuse abdominal tenderness, no guarding and no rebound tenderness.

On December 24, 2012 Dr. Joseph Pettus, a Board-certified urologist, recommended an immediate exploratory laparotomy bladder rupture repair and any other indicated procedures from Dr. Najjar or himself. On review of her CAT scan, he stated that appellant appeared to have an intraperitoneal bladder rupture. Dr. Pettus noted that she had been involved in a motor vehicle accident four days prior.

In a report dated December 24, 2012, Dr. Najjar reviewed appellant's history of illness. He stated that she had a motor vehicle collision and corroborated her prior medical history. Dr. Najjar explained that the CAT scan revealed leakage throughout the abdominal cavity and that testing revealed worsening leukocytosis and increased creatinine consistent with reabsorption of urine from the peritoneal cavity and worsening renal insufficiency. He concurred with Dr. Pettus' recommendation of immediate exploratory surgery.

In an operative report dated December 24, 2012, Dr. Pettus stated that appellant had been involved in a motor vehicle incident and described the procedures to repair a bladder tear found under exploratory surgery. He stated that she had a small opening in the dome of the posterior bladder, which was repaired.

On January 1, 2013 Dr. Najjar stated that appellant had been involved in a motor vehicle incident on December 20, 2012. He stated that she had gone to an emergency room on that date, but that they did not make any acute findings. On December 23, 2012 appellant presented to another hospital after experiencing acute abdominal pain, where she was diagnosed with a bladder rupture. Dr. Najjar assisted in surgery due to the recent motor vehicle collision in case there was other abdominal trauma. Appellant underwent bladder repair, lysis of adhesions and a small bowel repair. She was discharged from the hospital with a catheter on January 1, 2013 in stable condition.

A hearing was held before an OWCP hearing representative on July 26, 2013. Counsel noted that he had requested a statement on causal relationship from Dr. Pettus and Dr. Najjar, but that it had not yet been received. Appellant stated that she did not know at the time of her bladder rupture that it was work related, but that she had realized it later when reading over her physicians' reports. She noted that she had also hurt her back and neck as a result of this incident. Appellant stated that she had an appointment with Dr. Pettus in August for a follow-up examination. She noted that she had seen a physician roughly a month prior to December 20, 2012 for blood in her urine, which resolved on medication, but that she had attributed this condition to her regular gynecological pattern. OWCP's hearing representative requested that appellant submit records from the treating physician for this condition. Appellant clarified that she had arrived at the hospital on December 23, 2012 and had surgery the next day. The hearing representative explained that appellant should submit a report on causal relationship from her physicians and that the record would be held open for 30 days to receive such evidence.

Appellant submitted an unsigned gynecological medical report dated September 26, 2012.

On August 1, 2013 Dr. Najjar stated that he felt that the motor vehicle crash on December 20, 2012 caused her bladder perforation, as "there were no other factors between that time to the presentation of abdominal pain." He explained further that the collision may have caused a small tear to the bladder that progressed into a full injury with leakage of urine into the abdomen. Dr. Najjar noted that there was a detailed review of appellant's medical history along with an examination taken on December 24, 2012, and summarized the testing, treatment and surgery she underwent from her arrival through discharge. He stated that the mechanism of her injury was a rear-ended motor vehicle collision.

By decision dated September 9, 2013, OWCP's hearing representative affirmed its denial of compensation. He stated that appellant had established the medical component of fact of injury, but that her claim remained denied because she had not submitted a well-rationalized opinion from a physician on the issue of causal relationship. The hearing representative found that Dr. Najjar's letter dated August 1, 2013 did not meet appellant's burden of proof, because he proffered only a speculative opinion that the bladder rupture was injury related as it manifested several days after the accident; because he did not discuss the collision in detail; and because he

had not differentiated between her condition prior to and following December 20, 2012 with regard to her prior urinary issues.

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 timely filed within the applicable time limitation period of FECA, that an injury³ was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴

To determine 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. A fact of injury determination is based on two elements. 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. 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. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.⁵

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.⁶ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁷ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician’s opinion.⁸

² *Id.* at §§ 8101-8193.

³ OWCP’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events of 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. 20 C.F.R. § 10.5(ee).

⁴ *T.H.*, 59 ECAB 388, 393 (2008); *see Steven S. Saleh*, 55 ECAB 169, 171-72 (2003); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁵ *Id.* *See Shirley A. Temple*, 48 ECAB 404, 407 (1997); *John J. Carlone* 41 ECAB 354, 356-57 (1989).

⁶ *See J.Z.*, 58 ECAB 529, 531 (2007); *Paul E. Thams*, 56 ECAB 503, 511 (2005).

⁷ *I.J.*, 59 ECAB 408, 415 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁸ *James Mack*, 43 ECAB 321, 329 (1991).

ANALYSIS

Appellant alleged that on December 20, 2012 she was involved in a motor vehicle collision, which resulted in lower back pain, neck pain and a bladder rupture three days later that required hospitalization. OWCP accepted that the December 20, 2012 incident occurred as alleged. It initially denied appellant's claim on April 12, 2013 and affirmed this denial on September 9, 2013, finding that there was insufficient medical evidence to establish that she sustained an injury causally related to the employment incident.

OWCP denied the claim on the grounds that appellant did not submit evidence containing a rationalized medical opinion on causal relationship. The medical evidence bearing on the issue of causal relationship consists primarily of reports from Dr. Najjar and Dr. Pettus. In a report dated January 1, 2013, Dr. Najjar stated that appellant had been involved in a motor vehicle incident on December 20, 2012. He stated that she had gone to an emergency room on that date, but that they did not make any acute findings. On December 23, 2012 appellant presented to another hospital after experiencing acute abdominal pain, where she was diagnosed with a bladder rupture. Dr. Najjar assisted in surgery due to the recent motor vehicle collision in case there was other abdominal trauma. In a report dated December 24, 2012, Dr. Pettus, a Board-certified urologist, recommended an immediate exploratory laparotomy bladder rupture repair and any other indicated procedures from Dr. Najjar or himself. On review of her CAT scan, he stated that appellant appeared to have an intraperitoneal bladder rupture. Dr. Pettus noted that she had been involved in a motor vehicle accident four days prior. These reports, along with the hospital notes dating from December 23, 2012 through April 26, 2013 and the reports of Drs. Patel, Randall and Shah, refer to the incident of December 20, 2012 only generally and without a clear affirmative statement on causal relationship and they are therefore not sufficient to meet appellant's burden of proof.⁹

The Board finds that appellant has established a firm diagnosis of bladder rupture. On August 1, 2013 Dr. Najjar stated that her bladder rupture was caused by the motor vehicle collision, explaining that "there were no other factors between that time to the presentation of abdominal pain." While this statement is speculative, he further explained his position by noting how appellant's injury could be physiologically caused by a motor vehicle collision, stating that it may have caused a small tear to the bladder that progressed into a full injury with leakage of urine into the abdomen. These two statements together, along with Dr. Najjar's prior detailed review of her medical history along with an examination taken on December 24, 2012, and summarization of the testing, treatment and surgery appellant underwent from her arrival through discharge, remain insufficiently rationalized to establish causal relationship. However, although Dr. Najjar's opinion may not be fully rationalized, proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. Appellant has the burden to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.¹⁰

⁹ See *J.F.*, Docket No. 09-1061 (issued November 17, 2009) (finding that medical evidence that does not opine as to the causal relationship between an appellant's injury and specified work-related factors is of diminished probative value on the issue of causal relationship).

¹⁰ See *Donald R. Gervasi*, 57 ECAB 281, 286 (2005); *William J. Cantrell*, 34 ECAB 1233, 1237 (1983).

This case is similar to several other cases in which the Board has found that, while a physician's opinion on causal relationship was not fully rationalized, there was nevertheless sufficient evidence to require further development of the case record on this issue. In *T.C.*, appellant alleged pregnancy complications and other injuries resulting from a motor vehicle incident.¹¹ She submitted several reports from her physicians, noting that she had been involved in a motor vehicle incident while pregnant, but lacking a clear and fully rationalized opinion on causal relationship. A physician stated that appellant was involved in a motor vehicle accident when she was seven months' pregnant and was hospitalized with contractions. In several notes, the physician stated that she was on bed rest due to a motor vehicle incident. OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish that her diagnosed conditions were causally related to the traumatic incident. The Board set aside this decision and remanded the case for further development, stating that the medical evidence clearly established that she was pregnant at the time of the incident, and that her physician had made an affirmative statement that she had suffered complications as a result. The Board found that, while the medical opinions were not fully rationalized, the medical evidence was sufficient to require further development of the case record. In *L.M.*, appellant alleged aggravation of a preexisting knee condition after stepping off of a curb.¹² A physician stated that she had stepped on a curb and as a result experienced a sharp pain in her knee, which he advised was a sprain of the knee from stepping on the curb and noted that the sprained knee already had some chondromalacia within it. He indicated that this led to an acute exacerbation of a preexisting condition, notably the chondromalacia of the patella and persistent pain. OWCP denied appellant's claim, finding that she had not submitted sufficient medical evidence to establish a causal relationship. The Board set aside this decision and remanded the case for further development, stating that, while this opinion was not sufficient to meet her burden of proof with regard to her claim for an aggravation of a preexisting knee condition, it raised a substantial inference between her claimed condition and the employment incident, and was sufficient to require OWCP to further develop the medical evidence. The Board noted that there was no opposing medical evidence of record.

In this case, the medical evidence clearly establishes that appellant was diagnosed with a bladder rupture three days after the motor vehicle incident of December 20, 2012, and that she underwent surgery to repair a bladder tear. As in *T.C.*, Dr. Najjar's opinion on causal relationship was not fully rationalized, but was supported by a statement of causation and findings on examination; unlike in *T.C.*, Dr. Najjar's opinion additionally contained an explanation of how the traumatic incident might have caused appellant's injury. OWCP has a responsibility to further develop the case record: it contains an affirmative statement of causation, gives a physiological explanation as to how the collision might have caused appellant's injury, contains an accurate history of her condition and treatment and is consistent with all other medical reports of record. Therefore, while the medical reports do not provide a fully rationalized medical opinion explaining how the December 20, 2012 motor vehicle collision caused her bladder rupture, they are consistent in indicating that appellant sustained an employment-related injury and raise a substantial inference between appellant's claimed

¹¹ Docket No. 13-511 (issued August 2, 2013).

¹² Docket No. 13-1402 (issued February 7, 2014).

condition and the employment incident. The Board concludes that this evidence is sufficient to require further development of the case record.¹³

On remand, OWCP should refer appellant, the case record and a statement of accepted facts to an appropriate specialist to determine whether she suffered an injury due to the December 20, 2012 employment incident. After such further development of the case record as it deems necessary, a *de novo* decision shall be issued.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether appellant's bladder rupture was causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 9, 2013 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to further action consistent with this decision.

Issued: May 7, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹³ See *Richard E. Simpson*, 55 ECAB 490, 500 (2004); *John J. Carlone*, *supra* note 5; see also *R.C.*, Docket No. 13-408 (issued January 10, 2014).