

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

C.B., Appellant)

and)

DEPARTMENT OF THE INTERIOR,)
NATIONAL PARK SERVICE, SOUTHEAST)
REGION, Atlanta, GA, Employer)

Docket No. 14-0671
Issued: August 24, 2015

Appearances:

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On January 28, 2014 appellant, through counsel, filed a timely appeal from a December 16, 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 an injury in the performance of duty on September 19, 2012.

On appeal, appellant's counsel contends that OWCP's decision is contrary to law and fact.

¹ 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On October 31, 2012 appellant, then a 54-year-old administrative assistant, filed a traumatic injury claim alleging that on September 19, 2012 she suffered an injury to her right upper wrist and thumb as a result of over usage caused by typing and writing. She noted that on that date, she heard her hand pop and had severe pain.

By letter dated November 6, 2012, OWCP asked appellant to submit further information. It asked her to respond to questions regarding how her injury occurred, whether there were witnesses and indicate if she had any other similar symptoms before the injury. OWCP also asked appellant to submit medical information in support of her claim. On December 3, 2012 appellant responded to the questions by indicating that she had immediate pain while writing up transfer of funds documents and that the pain in her hand was due to repetitive typing/writing which aggravated her condition.

Appellant submitted a December 3, 2012 statement prepared by a physician assistant that was countersigned by Dr. Jack H. Powell, a Board-certified surgeon, who diagnosed carpometacarpal (CMC) osteoarthritis of the right thumb, indicated that it had been treated by surgery and that appellant's prognosis was good. The report indicated that recovery was expected in six to eight weeks, after which time appellant should not experience any further limitations. The report noted that appellant did not indicate that she had an injury to her thumb, but stated that she was typing and writing at work on September 19, 2012 when she felt immediate pain. It noted that, after the initial visit, appellant was found to have pain in palpation of the CMC joint of the right hand, a positive CMC grind test and swelling and that an x-ray revealed severe osteoarthritis in the CMC joint of the right hand. The report further noted that repetitive tasks, such as typing and writing, could have aggravated appellant's condition.

By decision dated December 14, 2012, OWCP determined that appellant had established that she timely filed a claim that the incident or employment factor occurred, that a medical condition had been diagnosed and that she was in the performance of duty. However, it denied her claim because she had not submitted a detailed description of the employment factors that she believed caused the condition.

In an October 12, 2012 note, Dr. Powell assessed appellant with unspecified right osteoarthrosis, generalized or localized in her hand. He noted that appellant wished to have surgery and that she was restricted to no typing or writing.

By letter dated December 18, 2012, the employing establishment controverted appellant's claim. It, through the assistant regional director, indicated that appellant alleged that the injury occurred on September 19, 2012 while she was typing, but that she did not report the injury to him until 21 days later on October 10, 2012. The employing establishment also noted that, if her injury was caused by over usage, an occupational disease claim would need to be filed.

In a February 20, 2013 letter, Dr. Kevin D. Webster, a Board-certified internist, found that it was medically necessary to make significant changes to appellant's work situation. He noted that she was being treated for diabetes and had significant arthritis of her hands, especially the thumbs. Appellant had required surgery of the thumb and left upper extremity. Dr. Webster

noted that appellant reported considerable pain with prolonged typing along with recurrent emotional distress related to her work environment.

In a form report dated August 28, 2013, Dr. Powell indicated that appellant did not have an injury, rather she stated that she experienced immediate pain in the right thumb on September 9, 2012 while she was typing and writing at work. He noted that she stated that on October 9, 2012 her right thumb was aching and throbbing with sharp quality, and that the pain was moderate to severe in intensity. Dr. Powell listed the diagnosis of CMC osteoarthritis, and stated that he believed that this was an exacerbation of a preexisting condition.

In a decision date December 16, 2013, OWCP reviewed the merits of appellant's case but denied modification of the prior decision. It alleged that she had not established employment factors that she alleged caused her condition.

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.²

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.³ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.⁴ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁵

² *Jussara L. Arcanjo*, 55 ECAB 281, 283 (2004).

³ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.803(2)(a) (June 1995).

⁴ *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

⁵ *Judith A. Peot*, 46 ECAB 1036 (1995); *Ruby I. Fish*, 46 ECAB 276 (1994).

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

Appellant filed her claim for compensation on October 31, 2012. At that time, she indicated that, while working on September 19, 2012, she had sudden severe pain in her right wrist and thumb. There were no witnesses to this alleged incident. Appellant's statement that she sustained a traumatic injury on September 19, 2012, although entitled to great weight, is contradicted by her subsequent behavior. She did not inform any person at the employing establishment of this injury until October 10, 2012. There is no indication that appellant sought medical treatment until October 9, 2012. There is no explanation in the record for appellant's delay in reporting the injury or in seeking medical treatment. Furthermore, she informed her physician that she did not sustain a traumatic injury, yet she filed a claim for a traumatic injury which she alleged occurred on September 19, 2012. However, the record currently offers no support for her allegation that she sustained an injury in the performance of duty as a result of a traumatic injury on September 19, 2012.⁷

The circumstances surrounding appellant's account of an employment incident, include her delay in reporting the incident and her delay in seeking medical attention. In addition, she informed her treating physician that she did not suffer a traumatic injury. These discrepancies cast serious doubt on her claim.

For these reasons, the Board finds that appellant has not established that the incident occurred as alleged. Because appellant has not established that the September 19, 2012 incident occurred, it is not necessary for the Board to consider the medical evidence.⁸

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 failed to meet her burden of proof to establish an injury in the performance of duty on September 19, 2012.

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

⁷ 20 C.F.R. § 10.5(15), (16) defines a traumatic injury as a wound or other injury caused by a specific event or incident within a single workday or shift, whereas an occupational injury is defined as a condition produced in the work environment over a period longer than a single workday or shift.

⁸ *B.W.*, Docket No. 13-244 (issued May 13, 2013).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated December 16, 2013 is affirmed.

Issued: August 24, 2015
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

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