



## **FACTUAL HISTORY**

On September 2, 2014 appellant, then a 57-year-old store associate, filed a traumatic injury claim alleging that on August 30, 2014 she experienced tingling in her right hand, shoulder, back, and hip when she pulled a pallet of spare ribs and felt an electric shock in her hands.

Appellant submitted a September 3, 2014 work status note from a physician with an illegible signature who indicated that appellant could return to light duty with restrictions of no standing, pushing, and pulling up to 20 pounds, and lifting and carrying up to 20 pounds. She also provided office visit records dated September 2 and 3, 2014, which noted her complaints of right hand numbness and tingling and low back pain after she pulled a heavy cart at work.

In a September 9, 2014 attending physician's duty status report, a physician with an illegible signature indicated that appellant sustained an injury on August 30, 2014 when she pulled a cart of spare ribs. Diagnoses of carpal tunnel syndrome, low back pain, and wrist pain were reported. The physician checked a box marked "yes" that appellant's condition was caused or aggravated by the employment activity. Appellant was authorized to work light duty with restrictions.

Appellant was also examined by Dr. Edward J. Meyers, Board-certified in emergency medicine, who related in September 3 and 12, 2014 reports, appellant's complaints of right hand and low back pain. He reviewed appellant's history and conducted an examination. Dr. Meyers observed positive Phalen's, Tinel's, and Finkelstein's tests of the right wrist. He found no gross motor abnormalities or loss of strength or function. Dr. Meyers reported that straight leg raise testing was negative. He diagnosed carpal tunnel syndrome, low back pain, wrist pain, and hypothyroidism.

In September 26 and 29, 2014 reports, Dr. Clayton R. Lowder, a Board-certified family practitioner, reported that appellant complained of severe sharp pain in the right hand, wrist, and neck when she pulled heavy equipment. He noted tenderness and decreased range of motion of appellant's lumbar spine. Upon examination of the right wrist, Dr. Lowder observed tenderness of the right hand and wrist, decreased sensation, and positive Tinel's and Finkelstein's testing. He diagnosed low back pain, neck pain, wrist pain, and carpal tunnel syndrome.

On September 25, 2014 appellant underwent nerve conduction study and electromyography (EMG) testing by Dr. John K. Baker, a Board-certified neurologist, who related appellant's complaints of pain, numbness, and tingling in the right hand and some right shoulder and arm pain, which had been present for several months. Dr. Baker reported that the study was abnormal with evidence of right greater than left moderate median neuropathies at the wrists consistent with carpal tunnel syndrome.

In a September 29, 2014 magnetic resonance imaging (MRI) scan examination, Dr. Gilbert E. Parker, Jr., a Board-certified diagnostic radiologist, related appellant's complaints of neck pain between the shoulders. He observed slight right neural foraminal narrowing at C3-C4 with minimal disc bulges, the largest at C6-C7 mildly deforming the anterior thecal sac.

Appellant continued to receive medical treatment from Dr. Lowder, whose October 2 and 16, 2014 reports, noted appellant's complaints of right shoulder and hand pain and related that she hurt it at work. Upon examination of her lumbar spine, he observed tenderness at C6-7. Examination of the right upper extremity revealed no tenderness to palpation and decreased range of motion of the right hand. Dr. Lowder diagnosed neck pain, carpal tunnel syndrome, and herniated cervical disc disease.

In a letter dated November 12, 2014, OWCP informed appellant that the information submitted was insufficient to establish her claim. It requested that she provide a detailed description of how the alleged injury occurred and respond to specific questions. OWCP also advised appellant to submit a detailed report from her treating physician which included a history of how the claimed injury occurred, a diagnosis, and an opinion on how the condition was causally related to the alleged injury. Appellant did not provide a supplemental statement pursuant to OWCP's request.

On October 30, 2014 Dr. Greg O. Spellman, a Board-certified anesthesiologist, who specializes in pain medicine, related appellant's complaints of right neck, right shoulder, and right hip pain. Upon examination of her spine, he observed tenderness to palpation of the paraspinals. Spurling's, straight leg raise, and Faber's testing were positive. Dr. Spellman diagnosed cervical spondylosis, carpal tunnel syndrome, right hip pain, and chronic pain syndrome.

In a decision dated December 17, 2014, OWCP denied appellant's claim, finding insufficient evidence to establish fact of injury.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence,<sup>4</sup> including that he or she is an "employee" within the meaning of FECA<sup>5</sup> and that he or she filed his or her claim within the applicable time limitation.<sup>6</sup> The employee must also establish that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.<sup>7</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether "fact of injury" has been established.<sup>8</sup>

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<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *See M.H.*, 59 ECAB 461 (2008); *Emiliana de Guzman (Mother of Elpedio Mercado)*, 4 ECAB 357, 359 (1951).

<sup>6</sup> *R.C.*, 59 ECAB 42 (2008); *Kathryn A. O'Donnell*, 7 ECAB 227, 231 (1954).

<sup>7</sup> *G.T.*, 59 ECAB 447 (2008); *M.M.*, Docket No. 08-1510 (issued November 25, 2010).

<sup>8</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>9</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>10</sup>

An injury does not have to be confirmed by an eyewitness in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.<sup>11</sup> An employee has not met her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statement in determining whether a *prima facie* case has been established. An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>12</sup>

### ANALYSIS

Appellant alleged that on August 30, 2014 she sustained injuries to her right hand, shoulder, back, and hip when she pulled a pallet of spare ribs at work. OWCP denied her claim finding insufficient evidence to establish fact of injury. The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury on August 30, 2014.

In her CA-1 form, appellant stated that she experienced tingling in her right hand, shoulder, back, and hip when she pulled a pallet of spare ribs and felt an electric shock in her hands. The Board notes that there is no detailed account of the alleged injury sufficient to establish that the incident occurred in the manner alleged.<sup>13</sup> In its November 12, 2014 development letter, OWCP informed appellant that the information initially provided was insufficient to support her claim and requested additional evidence. Appellant provided no response to OWCP's request for information. The Board finds that her vague recitation of facts does not support her allegation that the specific August 30, 2014 event occurred and caused a work-related injury.<sup>14</sup>

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<sup>9</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>10</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>11</sup> *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

<sup>12</sup> *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>13</sup> *See M.B.*, Docket No. 11-1785 (issued February 15, 2012); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

<sup>14</sup> *See Paul Foster*, 56 ECAB 1943 (2004); *Betty J. Smith*, 54 ECAB 174 (2002); 5 U.S.C. § 8101(5).

The Board further finds that the contemporaneous medical evidence is inconsistent in the description of the alleged incident. The office visit records of September 2 and 3, 2014, bearing illegible signatures, provide a different history of injury, that appellant pulled a heavy cart at work. Dr. Baker noted in his September 25, 2014 report, appellant's complaints of pain, numbness, and tingling in the right hand and some right shoulder and arm pain, which had been present for several months. Dr. Lowder related that appellant pulled heavy equipment, which caused her pain complaints.

Neither appellant, nor any of the reports she submitted in support of her claim provide a consistent, detailed history of injury describing the time, place, and manner in which the alleged injury occurred. Accordingly, the evidence is insufficient to establish that the incident occurred as alleged.

Appellant has not met her burden of proof to establish that she experienced the August 30, 2014 employment incident at the time, place, and in the manner alleged or that it caused an injury. Because she has not met her burden of proof to establish the fact of injury, it is not necessary to discuss the probative value of the medical reports.<sup>15</sup>

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 that she sustained a traumatic injury on August 30, 2014.

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<sup>15</sup> *Tracey P. Spillane*, 54 ECAB 608 (2003).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 25, 2015  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

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