



## **FACTUAL HISTORY**

On February 1, 2013 appellant, then a 65-year-old postmaster, filed a Form CA-1, traumatic injury claim, alleging that on January 30, 2013, while shoveling snow, she slipped and fell injuring her left wrist while in the performance of duty. She did not stop work but returned to a light-duty position.

On January 30, 2013 appellant was treated by a nurse practitioner for a left wrist and right shoulder work injury. She reported that she was shoveling snow when she tripped and fell injuring her right shoulder and left wrist. The nurse practitioner noted x-rays which revealed a fracture of the distal radius and appellant was placed in a wrist splint. She diagnosed left wrist fracture with significant swelling and right shoulder strain secondary to fall. On February 4, 2013 the nurse practitioner removed the splint and placed appellant in a cast. In an attending physician's report dated February 12, 2013, she noted that appellant reported shoveling snow, tripping, and falling injuring her shoulder and wrist. The nurse practitioner diagnosed right shoulder strain and left wrist distal radial fracture. She noted with a checkmark "yes" that appellant's condition was caused or aggravated by an employment activity and returned her to light-duty work.

Appellant submitted an x-ray of the left wrist dated January 30, 2013 which revealed nondisplaced fracture of the distal radius with degenerative changes. An x-ray of the right shoulder dated January 30, 2013 revealed degenerative changes of the acromioclavicular joint with inferior spur formation. Appellant continued treatment with a nurse practitioner. She diagnosed fall on ice, left wrist distal radius fracture and right shoulder pain and strain. In a duty status report dated March 14, 2013, a nurse practitioner noted that appellant reported slipping on ice and fracturing her left wrist and injured her right shoulder. She diagnosed left fractured wrist and right shoulder pain and returned appellant to work full time with restrictions. An x-ray of the left wrist dated February 26, 2013 revealed healing distal radius fracture and osteoarthritis. On March 5, 2013 appellant was treated by a physician assistant for right shoulder pain. Appellant reported that on January 30, 2013, while at work, appellant was shoveling snow and she slipped and fell sustaining a right shoulder and left wrist injury. She noted that appellant remained in a wrist brace and was having radiating right shoulder pain which was exacerbated by movement. The physician assistant noted tenderness of the right shoulder, minimally positive impingement sign, and symmetric with intact motor and sensory testing. She diagnosed joint pain in the shoulder region, impingement syndrome of the right shoulder status post work injury on January 30, 2013, degenerative joint disease of the acromioclavicular joint, right shoulder and adhesive capsulitis of the right shoulder. A March 5, 2013 right shoulder x-ray revealed prominent degenerative acromioclavicular joint with predominant superior spurring, mild decreased subacromial space, and degenerative left acromioclavicular joint with superior extension. A March 14, 2013 x-ray of the left wrist revealed healing distal radius fracture.

In a January 30, 2014 letter, OWCP advised appellant of the type of evidence needed to establish her claim, particularly requesting that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific employment factors.

Appellant submitted emergency room records dated January 30, 2013 for treatment of right shoulder and left wrist injuries. A nurse diagnosed left posterior distal radial fracture.

Appellant submitted reports dated February 13 and 19, 2013 from a nurse practitioner who treated her for a right shoulder injury after a work-related fall in 2013. The nurse practitioner diagnosed right shoulder pain and noted that appellant was scheduled for surgery. She noted that appellant's injury was related to a fall.

In a March 7, 2014 decision, OWCP denied the claim on the grounds that appellant failed to submit sufficient medical evidence to establish that a medical condition was diagnosed in connection with the claim work incident. It noted that the medical evidence submitted was from a nurse or nurse practitioner and not from a physician.

On June 27, 2014 appellant requested reconsideration. In an undated statement, she indicated that on January 31, 2013 she slipped while shoveling snow at work. She sought treatment at a health clinic and x-rays revealed a left wrist fracture and she was placed in a cast. Appellant noted undergoing a magnetic resonance imaging scan of the right shoulder which revealed a rotator cuff tear for which she underwent surgery on May 19, 2014. She submitted a duplicate copy of the March 5, 2013 report from a nurse practitioner countersigned by Dr. Thomas M. Mirich, III, a Board-certified orthopedic surgeon.

In a July 9, 2014 decision, OWCP denied appellant's request for reconsideration on the grounds that the evidence was insufficient to warrant a merit review.

### **LEGAL PRECEDENT -- ISSUE 1**

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 filed within the applicable time limitation 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 is 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 occupational disease.<sup>3</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. There are two components involved in establishing 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>4</sup>

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable medical certainty, and must be supported by medical

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<sup>3</sup> Gary J. Watling, 52 ECAB 357 (2001).

<sup>4</sup> T.H., 59 ECAB 388 (2008).

rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>5</sup>

### **ANALYSIS -- ISSUE 1**

It is not disputed that appellant worked as a postmaster and that on January 30, 2013 she was shoveling snow and slipped and fell. However, she has not submitted sufficient medical evidence to establish any diagnosed conditions that are causally related to the January 30, 2013 work incident.

On January 30, 2014 OWCP advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from an attending physician addressing how specific employment factors may have caused or aggravated her claimed condition.

Appellant submitted reports from a nurse practitioner dated January 30 to March 14, 2013, who treated her for injuries sustained to her left wrist and right shoulder after a fall at work. She reported that she was shoveling snow and tripped and fell injuring her right shoulder and left wrist. The nurse practitioner noted x-rays revealed a fracture of distal radius and she diagnosed left wrist fracture and right shoulder strain secondary to fall. Appellant also submitted emergency room notes from a nurse dated January 30, 2013 who diagnosed left posterior distal radial fracture. Similarly, she was treated by a physician assistant on March 5, 2013 who diagnosed pain in the joint involving the shoulder region, impingement syndrome of the right shoulder status post work injury on January 30, 2013, degenerative joint disease of the acromioclavicular joint, right shoulder, and adhesive capsulitis of the right shoulder. However, the Board has held that treatment notes signed by a nurse or physician assistant are not considered medical evidence as these providers are not a physician under FECA.<sup>6</sup>

The remainder of the medical evidence, including x-ray reports, are insufficient to establish the claim as they fail to provide an opinion on the causal relationship between appellant's job and her diagnosed conditions

As noted, part of appellant's burden of proof includes the submission of rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship between the employment and the diagnosed condition. Therefore, these notes are insufficient to meet her burden of proof.

The record before OWCP at the time of its March 7, 2014 decision contains no other medical evidence. Because appellant did not submit medical evidence from a physician

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<sup>5</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *L.D.*, 59 ECAB 648 (2008) (a nurse practitioner is not a physician as defined under FECA). *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

explaining how and why any diagnosed condition was due to the January 30, 2013 work incident, she has not met her burden of proof.

On appeal, appellant disagrees with OWCP's decision denying her claim for compensation and noted that she submitted sufficient evidence to establish her claim. As noted above, the medical evidence does not establish that appellant's diagnosed conditions are causally related to her employment. Appellant failed to submit a report from a physician which provides medical rationale explaining the reasons why her claimed conditions were caused or aggravated by particular employment duties.

### **LEGAL PRECEDENT -- ISSUE 2**

Under section 8128(a) of FECA,<sup>7</sup> OWCP has the discretion to reopen a case for review on the merits. OWCP must exercise this discretion in accordance with the guidelines set forth in section 10.606(b)(2) of the implementing federal regulations, which provide that a claimant may obtain review of the merits of his or her written application for reconsideration, including all supporting documents, sets forth arguments and contain evidence that:

- “(1) Shows that OWCP erroneously applied or interpreted a specific point of law;  
or
- (2) Advances a relevant legal argument not previously considered by OWCP; or
- (3) Constitutes relevant and pertinent new evidence not previously considered by OWCP.”<sup>8</sup>

Section 10.608(b) provides that any application for review of the merits of the claim which does not meet at least one of the requirements listed in section 10.606(b) will be denied by OWCP without review of the merits of the claim.<sup>9</sup>

### **ANALYSIS -- ISSUE 2**

OWCP denied appellant's claim for a traumatic injury on the grounds that the medical evidence was insufficient to establish that her claimed conditions were causally related to work events. Thereafter, on July 9, 2014 it denied her reconsideration request, without a merit review, on the grounds that the evidence was insufficient to warrant a merit review.

However, with her June 27, 2014 reconsideration request, appellant submitted relevant and pertinent evidence not previously considered by OWCP. After the March 7, 2014 decision, which denied appellant's claim because she had not submitted a medical opinion establishing that the claimed medical condition was causally related to the established work-related events, appellant re-submitted a March 5, 2013 report from a physician assistant which was

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<sup>7</sup> 5 U.S.C. § 8128(a).

<sup>8</sup> 20 C.F.R. § 10.606(b)(2).

<sup>9</sup> *Id.* at § 10.608(b).

countersigned by Dr. Mirich, a Board-certified orthopedic surgeon. In this report, the physician assistant noted that appellant reported slipping and falling while shoveling snow at work on January 30, 2013 and injured her right shoulder and left wrist injury. She noted findings of tenderness of the right shoulder and minimally positive impingement sign and diagnosed pain in the joint involving the shoulder region, impingement syndrome of the right shoulder status post work injury on January 30, 2013, degenerative joint disease of the acromioclavicular joint, right shoulder, and adhesive capsulitis of the right shoulder. This medical evidence is relevant as she opined that appellant was injured on January 30, 2013. Although OWCP's July 9, 2014 decision found that the evidence was duplicative, this evidence was not previously countersigned by a physician and was not considered medical evidence by OWCP in rendering a decision. The Board has held that the requirement for reopening a claim for merit review does not include the requirement that a claimant must submit all evidence which may be necessary to discharge his or her burden of proof. Instead, the requirement pertaining to the submission of evidence in support of reconsideration only specifies that the evidence be relevant and pertinent and not previously considered by OWCP.<sup>10</sup> The Board finds that, in accordance with 20 C.F.R. § 10.606(b)(2)(3), this new evidence from Dr. Mirich is sufficient to require reopening appellant's case for further review on its merits.

Therefore, OWCP improperly refused to reopen appellant's claim for further review on its merits under 5 U.S.C. § 8128. Consequently, the case must be remanded for OWCP to reopen appellant's claim for a merit review. Following this and such other development as deemed necessary, OWCP shall issue an appropriate merit decision on appellant's claim.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that her claimed conditions were causally related to her employment. The Board further finds that OWCP, in its decision dated July 9, 2014, improperly denied her request for reconsideration of her case on its merits.

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<sup>10</sup> See *Helen E. Tschantz*, 39 ECAB 1382 (1988).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 7, 2014 decision of the Office of Workers' Compensation Programs is affirmed and the July 9, 2014 decision is set aside and the case is remanded to OWCP for further development in accordance with this decision.<sup>11</sup>

Issued: December 1, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.