

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

A.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Worth, TX, Employer**

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**Docket No. 15-1421
Issued: December 28, 2015**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 16, 2015 appellant filed a timely appeal from a May 26, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish that she sustained a cervical injury causally related to factors of her federal employment.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal appellant provided a written description of factors of her federal employment and her alleged injury. The Board is precluded from considering new evidence which was not before OWCP at the time of its decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On August 26, 2014 appellant, then a 46-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that, as a result of her federal duties, she sustained a cervical strain, cervical radiculopathy, and impingement syndrome. The employing establishment controverted her claim, challenging fact of injury/causal relationship.

By letter to appellant dated September 8, 2014, OWCP noted that the evidence was insufficient to support her claim and listed evidence that she needed to submit, including evidence to support that she experienced employment factors alleged to have caused the injury, a diagnosis of a medical condition, and a physician's opinion as to how her employment activities contributed to or aggravated her medical condition.

In response, appellant submitted medical reports dated from May 14 through November 7, 2014 from Dr. Ronnie D. Shade, appellant's treating Board-certified orthopedic surgeon. Dr. Shade noted that appellant complained of neck and left shoulder pain and that, after examining her and reviewing multiple objective tests, he concluded that she had bilateral cervical radiculopathy at C6-7 and impingement of the left shoulder. Appellant also submitted the results of the various objective tests, including x-rays, nerve conduction velocity studies, and electromyograms.

By decision dated November 20, 2014, OWCP denied appellant's claim as appellant had not submitted sufficient evidence to establish that any event occurred which could have contributed to her medical condition.

On December 19, 2014 appellant requested review of the written record before an OWCP hearing representative. She continued to submit medical reports by Dr. Shade which indicated that he continued to treat appellant through February 18, 2015 for bilateral cervical radiculopathy at C6-7 and impingement syndrome of the left shoulder.

Appellant also submitted medical reports that dealt with other alleged injuries, including reports from Concentra regarding a head injury allegedly sustained on May 2, 2015 and the results of a psychiatric evaluation concerning an on-the-job injury that occurred on November 9, 2013 when appellant encountered a man who had been shot in the head while she was delivering mail.

By decision dated May 26, 2015, an OWCP hearing representative affirmed the November 20, 2014 decision. The hearing representative found that appellant had not established that any described employment duties caused her alleged cervical injury.

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, that an injury was sustained in the performance of duty as alleged, and that any disabilities and/or specific conditions for which compensation is claimed are causally related to

the employment injury.³ 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.⁴

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁵ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁶

ANALYSIS

The Board finds that appellant failed to meet her burden of proof to establish her claim.

Appellant must provide a factual statement identifying the employment factors alleged to have caused the employment injury before OWCP can review the medical evidence to determine whether an employment-related medical condition has been diagnosed. In this case, she did not offer any explanation on her claim form as to how she allegedly sustained her alleged cervical condition. Appellant simply related that her condition was employment related. She provided no description regarding her work duties.⁷

By letter dated September 8, 2014, OWCP asked appellant to submit further information, including evidence that she experienced employment factors that she alleged caused her medical condition and medical evidence in support of her claim. Appellant did not respond to this request. She did provide various medical reports in response to this letter. Some of this medical evidence was irrelevant to the instant case as it discussed other injuries, including an alleged head injury and an alleged emotional injury that involved other dates of injury. However, the reports of Dr. Shade noted a medical diagnosis of bilateral cervical radiculopathy at C6-7 and impingement of the left shoulder. Despite this evidence of a medical diagnosis, appellant failed to submit any personal statement with regard to the special duties she performed while working which are factors of her federal employment that she alleged caused her medical condition.

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim. When an employee claims that she sustained an injury in the performance of duty, he or she must submit sufficient evidence identifying specific employment factors alleged to have caused or contributed to the presence or occurrence of the

³ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *See S.P.*, 59 ECAB 184, 188 (2007).

⁶ *See Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *see also P.W.*, Docket No. 10-2402 (issued August 5, 2011).

⁷ *See L.M.*, Docket No. 14-805 (July 21, 2014).

disease or condition alleged.⁸ Appellant failed to submit a factual statement identifying which factors of federal employment she alleged caused her injury. She made no statement on her claim form as to what physical duties she performed during her daily employment that led to her medical condition. Appellant also failed to provide a response to OWCP's letter asking her to submit evidence to support the employment factors she alleged caused her injury. Without such statement or evidence, she has failed to establish fact of injury.

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 establish that she suffered 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 May 26, 2015 is affirmed.

Issued: December 28, 2015
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁸ *J.J.*, Docket No. 12-1569 (issued February 12, 2013).