

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

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A.G., Appellant )

and )

**DEPARTMENT OF THE TREASURY,** )  
**INTERNAL REVENUE SERVICE,** )  
**Farmers Branch, TX, Employer** )

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**Docket No. 15-1251**  
**Issued: October 15, 2015**

*Appearances:*  
*Tim Egbuchunam, for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 12, 2015 appellant, through her representative, filed a timely appeal from a February 27, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish that she sustained an occupational disease in the performance of duty.

**FACTUAL HISTORY**

On July 28, 2014 appellant, then a 38-year-old clerk, filed an occupational disease claim alleging that on July 15, 2014, while performing her duties, she had a sharp, burning, stabbing,

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

electrolytic pain from her lower neck to her elbow. She noted being in pain and going to an emergency room on July 21, 2014 where she was diagnosed with a muscle sprain and taken off work for three days. Appellant stated that she returned to work on July 25, 2014, but still had pain such that she left work early and went to the emergency room on July 26, 2014 where she was diagnosed with a rotator cuff tear. She noted reporting her condition to her manager on July 15, 2014 during a meeting.

Appellant's supervisor, N.W., noted that, while appellant alleged reporting the injury to her on July 15, 2014, she was on leave from July 10 to 15, 2014 and therefore appellant could not have reported the injury to her. She further indicated that appellant did not report any injury on that day to the acting supervisor, F.C. N.W. noted meeting with appellant on July 16, 2014 to discuss tardiness, break and lunch time, and absences. She related that appellant reported being under a lot of stress and had pains in her back but she never indicated an injury related to her job duties.

In a statement dated July 21, 2014, appellant indicated that she was under a doctor's care from July 21 to 23, 2014 and requested advanced sick leave. She also submitted coworker statements. In a July 28, 2014 statement, C.B. noted that she had witnessed appellant in pain and having issues with her shoulders, neck, and back. A July 25, 2014 statement from C.C. noted that appellant advised her that she was having some discomfort in her shoulders and neck on July 15, 2014. Appellant reported a sharp burning pain and noted she was using a heating pad for comfort and ice packs.

Appellant was treated in the emergency room by Dr. Sarah Shoemaker Way, Board-certified in emergency medicine, on July 21, 2014 for left shoulder pain. Dr. Way diagnosed left shoulder pain, arthralgia, and muscle strain and noted appellant was off work for three days. In a note dated July 21, 2014, she noted that appellant was treated on July 21, 2014 and would not be able to work for three days. Appellant submitted a July 26, 2014 note from a health care provider with an illegible signature who noted that appellant could return to work on July 29, 2014.

Appellant was treated by Dr. Kelly D. Alana, a chiropractor, on July 29, 2014 for therapy and an examination. Dr. Alana took appellant off work on July 29, 2014.

Appellant was seen in an emergency room on July 26, 2014 by Dr. Dirk Perritt, Board-certified in emergency medicine, for a rotator cuff injury. Dr. Perritt noted that appellant's condition was good and discharged her with prescriptions for hydrocodone and prednisone.

By letter dated August 6, 2014, OWCP advised that the evidence was insufficient to establish that appellant actually experienced the incident alleged to have caused the injury. It also noted that there was no physician's opinion as to how work activities caused or aggravated a medical condition and requested that she provide such an opinion. OWCP asked that appellant specifically describe the employment-related activities that contributed to her condition, the frequency of the work, and report any activities outside her employment. It also requested that the employing establishment provide comments from a knowledgeable supervisor.

Appellant provided a July 28, 2014 note from Dr. Shamim Khambati, a Board-certified internist, who treated appellant for left shoulder and arm pain. Dr. Khambati noted that appellant was excused from work until she saw an orthopedist.

In a July 30, 2014 report, Dr. Ira O. Murchison, an osteopath, noted that appellant presented with sharp and stabbing pain in the cervical spine, left shoulder, and elbow. He noted that she worked as a clerk which involved repetitive duties including typing, keyboarding, using a mouse, grabbing, lifting, holding, and carrying boxes that weighed between 5 and 50 pounds, restocking supplies on shelves above and below shoulder level. Dr. Murchison noted that appellant was reaching above her head along with bending and stooping to put supplies away which involved constant use of hands, wrists, elbows, shoulders, and her neck on a constant basis eight hours a day five days a week. He noted findings and diagnosed sprain/strain of the cervical spine, sprain/strain left rotator cuff, impingement syndrome left shoulder, bursitis left shoulder, cubital tunnel syndrome left elbow, sprain/strain left elbow, sprain/strain left wrist, sprain/strain left hand, muscle spasms, and left shoulder muscle weakness. Dr. Murchison opined that appellant sustained injuries to her cervical spine, left shoulder, left elbow, and left wrist/hand while working as a clerk. He noted that the injury occurred due to the repetitive nature of her job duties. Dr. Murchison opined that the daily repetitive activities over the past 15 years put wear and tear on appellant's neck, shoulder, elbow, wrist, and hand joints and resulted in her injuries. In a September 3, 2014 duty status report, he noted findings and opined that she was unable to work from August 25 to September 5, 2014. Appellant also provided reports of diagnostic testing and records from a rehabilitation facility.

Appellant submitted a statement dated August 30, 2014 and noted on July 15, 2014 while sitting at her desk performing her duties she received a sharp, burning, stabbing, and electrolytic pain from her lower neck to her mid elbow. She reported her injury to her manager as they were conducting a meeting together. Appellant reported performing her job for a minimum of 40 hours a week.

The employing establishment provided an outside employment or business activity request dated January 24, 2013 prepared by appellant which noted that she worked a position outside the government at Presbyterian Hospital in Dallas, Texas as a part-time dispatch operator beginning January 28, 2013 which connected rooms and doctors in the evenings and nights. The employing establishment submitted a statement from Gerri Soden, human resources specialist, dated August 8, 2014 who noted appellant's manager, N.W., disagreed with appellant's claimed date of injury and advised that she was not in the office on July 15, 2014 so appellant could not have informed her of her injury as she claimed. N.W. noted that appellant's job duties included stocking forms but she has not done that job in over a month prior to this claim. The employing establishment indicated that it received a July 29, 2014 medical form from Centralrehab advising that appellant was off work and her return was yet to be determined. However, on July 31, 2014 appellant sent a text to N.W. requesting time off to help her daughter move. The employing establishment submitted a text message from appellant to N.W. dated June 16, 2014 at 7:28 p.m. regarding the daughter's move. In an August 12, 2014 statement, N.W. described appellant's tasks as mainly sitting at the initial receptionist desk and performing data entry, screening taxpayers, supplying them with information, offering assistance to taxpayers at the machines which required her to verbally guide them through computer program, and stock forms. However, due to office staffing issues the task of offering actual assistance was rare. N.W. noted

assistance from the male employees in the office was provided with lifting heavy boxes. She provided a copy of a job description for a clerk.

In a decision dated October 27, 2014, OWCP denied appellant's claim finding that the evidence did not support that the injury or events occurred as alleged.

On November 2 and 25, 2014 appellant requested reconsideration. She submitted a report from Dr. Murchison dated July 30, 2014, reports of diagnostic testing, and a job description for a clerk, all previously of record.

The employing establishment submitted a statement from N.W. dated December 15, 2014, who disagreed with appellant's statement concerning the description of her duties. N.W. noted appellant's statement that she consistently stocked shelves in the lobby and storage room on a daily basis was not accurate. She indicated that while appellant's manager and acting manager she stocked the forms in the lobby and storage room every three weeks and appellant would use a cart to pull out forms to assist in stocking. N.W. never witnessed appellant carrying boxes, rather she would take out a handful of forms from a box and place them on the cart.

In a decision dated February 27, 2014, OWCP denied modification of the decision dated October 27, 2014.

### **LEGAL PRECEDENT**

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 he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. Appellant must also establish that such event, incident or exposure caused an injury.<sup>2</sup>

An employee's statement 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>3</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met his or her burden 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. Circumstances such 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>4</sup>

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<sup>2</sup> See *Walter D. Morehead*, 31 ECAB 188, 194 (1979) (occupational disease or illness); *Max Haber*, 19 ECAB 243, 247 (1967) (traumatic injury). See generally *John J. Carlone*, 41 ECAB 354 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>3</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>4</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

## ANALYSIS

Appellant, a clerk, filed an occupational disease claim, alleging that while performing her duties, she had a sharp, burning, stabbing, electrolytic pain from her lower neck to her elbow. She became aware of the condition on July 15, 2014 but did not stop work at that time. The Board finds that there are inconsistencies in the evidence which cast serious doubt upon the validity of the claim.

Appellant indicated that, while performing her duties, she had a sharp, burning, stabbing, electrolytic pain from her lower neck to her elbow, but she did not specifically indicate what duties she was performing when her condition commenced. She noted reporting her condition to her manager N.W. on July 15, 2014 during a meeting. However, N.W. noted that appellant could not have reported the injury to her at that time as she was on leave from July 10 to 15, 2014. She further indicated that appellant did not report an injury on July 15, 2014 to the acting supervisor. N.W. stated that she did meet with appellant on July 16, 2014 but, while appellant reported being under a lot of stress and had pains in her back, she did not indicate that she sustained an injury related to her job duties. Appellant's statement conflicts with that of N.W. and she had not provided any statement that seeks to clarify or explain this discrepancy.

Additionally, the employing establishment noted that it received a July 29, 2014 medical form advising that appellant was off work and her return was yet to be determined, but on July 31, 2014 appellant sent a text message to N.W. requesting time off to help her daughter move. This is inconsistent behavior for a person who has sustained a shoulder, neck, and back injury and also serves to cast serious doubt upon the validity of the claim.

Appellant submitted coworker statements from coworkers C.C. and C.B., but neither person noted witnessing appellant performing specific duties at a particular time which are alleged to have caused or contributed to her condition. She also provided numerous medical records. However, the medical evidence did not provide a clear history of injury consistent with appellant's statements. Dr. Murchison noted certain of appellant's duties and opined that her condition was employment related, but he did not provide any particulars regarding the history of injury that appellant reported regarding the onset of her symptoms from July 15 to 25, 2014. Under these circumstances, the lack of confirmation of the claimed incident and inconsistencies about the manner of how she was injured cast serious doubt upon the validity of the claim.

For these reasons, the Board finds that appellant has not established that she sustained an occupational disease in the performance of duty. As appellant has not established that the claimed work incidents occurred as alleged, it is not necessary for the Board to consider the medical evidence regarding causal relationship.<sup>5</sup> Consequently, she has not met her burden of proof in establishing her claim.

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.

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<sup>5</sup> See *S.P.*, 59 ECAB 184 (2007).

**CONCLUSION**

The Board finds that appellant has failed to meet her burden of proof to establish that she sustained an occupational disease in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 27, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 15, 2015  
Washington, DC

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

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

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