



## **FACTUAL HISTORY**

On February 3, 2015 appellant, then a 54-year-old correctional officer, filed a traumatic injury claim alleging that on January 24, 2015 at 8:30 a.m., she sustained injuries to her left shoulder blade, elbow, forearm, and wrist while booking-in and changing-out an intoxicated woman. She stopped work on January 30, 2015. The employing establishment indicated that it received notice of the claimed injury on February 6, 2015. It also checked a box on the form to indicate that the claimed injury occurred in the performance of duty.

In a January 28, 2015 work status form, Dr. Larry Welling, Board-certified in emergency medicine, advised that appellant should not return to work until further notice. He diagnosed left upper extremity pain. On the form, Dr. Welling circled “yes” to the question of whether appellant’s condition was work related. In a February 11, 2015 work status note, he diagnosed persistent left upper extremity pain and again instructed that appellant should not return to duty until further notice.

OWCP, in a February 23, 2015 letter, informed appellant that the evidence of record was insufficient to support her claim. It requested that she submit a detailed description of how the injury occurred and a medical report containing a physician’s opinion supported by a medical explanation as to how work factors caused a diagnosed condition. With regard to the incident, OWCP asked that appellant explain where she was and what she was doing at the time that the injury occurred. It also asked that she provide statements from others who witnessed the incident or had immediate knowledge of it.

In January 24, 2015 reports, Dr. Jay Johnson, a Board-certified diagnostic radiologist, reported that appellant was seen for x-rays “after trauma.” X-rays of appellant’s left elbow, humerus, forearm, and shoulder were negative for fracture and otherwise appeared normal. X-rays of the thoracic spine exhibited no acute fractures or compression deformities. Dr. Johnson diagnosed mild degenerative changes of the thoracic spine, noting a mild convex right curvature of the mid thoracic spine, and age appropriate mild degenerative endplate changes. Wrist x-rays revealed subtle oblique lucency through the ulnar styloid, suspicious for a nondisplaced fracture. Dr. Johnson diagnosed suspected nondisplaced incomplete fracture through the ulnar styloid.

In a medical report dated February 11, 2015, Dr. Welling reported that appellant was seen for a follow-up examination for left elbow and shoulder pain. Physical examination revealed slight tenderness over the left forearm and distal humerus, fair range of motion in the elbow, fairly good range of motion of the shoulder, and a bit of tenderness to palpation in the left thoracic and parascapular musculature. Dr. Welling noted that appellant reported nightmares of “the incident.” He diagnosed anxiety, and left upper extremity sprain and strain.

In March 2 and 3, 2015 physical therapy reports, Physical Therapists Rebecca Emmett and Anthony Valdez related that appellant presented with an injury that “occurred while trying to subdue a combative inmate.” The report stated that appellant injured her left arm, to the shoulder blade, while “involved in a combative, intoxicated inmate.” The mechanism of injury was recorded as “dealing with a combative inmate” on January 24, 2015. Physical Therapists Rebecca Emmett and Anthony Valdez noted findings and diagnosed lateral epicondylitis and

adhesive capsulitis. A March 12, 2015 physical therapy report, completed by Physical Therapists William Little and Betsy Atchinson, reiterated the history of injury, examination findings, and diagnosis provided by the preceding physical therapy reports.

Dr. Welling noted in a March 9, 2015 report that appellant was seen for a recheck of her left shoulder injury. Appellant reported feeling significantly better. She showed decreased upper extremity tenderness and a very good range of motion. Dr. Welling diagnosed appellant with anxiety and an improving sprain and strain of the left upper extremity. He released appellant to light duty, with restrictions on inmate contact and heavy lifting with the left arm. In a March 9, 2015 work status note, Dr. Welling reported that appellant could return to partial duty with restrictions. He advised against inmate contact.

By decision dated March 26, 2015, OWCP denied appellant's claim, finding the evidence insufficient to demonstrate that the employment incident occurred on January 24, 2015, as alleged. It also found that she failed to submit medical evidence establishing a causal relationship between the alleged incident and a diagnosed condition.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,<sup>3</sup> including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.<sup>4</sup> The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.<sup>5</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 he or she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.<sup>6</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>7</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 his subsequent

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

<sup>4</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

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>8</sup>

### ANALYSIS

On February 6, 2015 appellant filed a claim alleging that she sustained an injury to her left wrist, forearm, elbow, and shoulder while booking-in and changing-out an intoxicated female on January 24, 2015. On February 23, 2015 OWCP requested that she provide a detailed description of the claimed injury. Appellant did not respond prior to the March 26, 2015 decision. The Board finds that the factual evidence is insufficient to establish that the January 24, 2015 employment incident occurred as alleged.

Appellant, on her claim form, indicated that she was injured at 8:30 a.m. on January 24, 2015, but she did not report the employment incident until February 6, 2015. On the claim form, she alleged that she was injured while "booking-in and changing-out an intoxicated female." Appellant's description fails to adequately detail the alleged work incident, as required in a traumatic injury claim.<sup>9</sup> Her description is vague. It does not relate with specificity the circumstances of the injury, or identify the actual cause.<sup>10</sup> Appellant has not identified the inmate in question and she had not precisely stated what the inmate did to cause a left arm injury.

Physical therapy notes dated March 2, 3, and 12, 2015, relate that appellant was injured while processing an intoxicated inmate. While this statement is consistent with appellant's account it is also vague, failing to elucidate the particular mechanism of injury. The history of injury contained in other medical reports also does not clarify how appellant injured her arm while subduing the female inmate. As noted, OWCP requested that appellant provide a detailed description of how the injury occurred and to submit statements from persons who witnessed the injury or who had immediate knowledge of it. Appellant did not submit a responsive statement or supporting factual evidence.<sup>11</sup>

On appeal, appellant indicates that OWCP denied her claim because she did not file the traumatic injury claim in a timely fashion. While late notification is a pertinent factor,<sup>12</sup> the Board looks at the totality of evidence to determine if an employment incident occurred as alleged. In this case, the vague nature of the factual evidence, together with appellant's failure to respond to OWCP's request for a detailed description of the incident, casts serious doubt on

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<sup>8</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> *See S.W.*, Docket No. 15-0396 (issued June 19, 2015); *V.H.*, Docket No. 12-1621 (issued December 21, 2012).

<sup>10</sup> *See id.*

<sup>11</sup> *S.W.*, *supra* note 9; *see Q.D.*, Docket No. 14-1468 (issued December 23, 2014).

<sup>12</sup> *See supra* note 8.

whether the employment incident occurred as alleged. Therefore, the Board finds that OWCP properly denied appellant's claim.<sup>13</sup>

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 did not meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 8, 2015  
Washington, DC

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

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>13</sup> As appellant did not meet her burden to establish the occurrence of an employment incident, it is unnecessary to consider the medical evidence with regards to causal relationship. See *Bonnie A. Contreras*, 57 ECAB 364 (2006).