

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

D.R., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Washington, DC, Employer**

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**Docket No. 15-1281
Issued: September 16, 2015**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 18, 2015 appellant filed a timely appeal from a March 4, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a back injury in the performance of duty on January 16, 2015.

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant indicates that she provided evidence to the employing establishment, but which was submitted to OWCP after the March 4, 2015 decision. The Board's review is limited to evidence that was before OWCP at the time of the final decision. 20 C.F.R. § 501.2(c)(1). Appellant may submit new evidence to OWCP along with a request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On January 28, 2015 appellant, then a 37-year-old letter carrier, filed a Form CA-1 (traumatic injury claim) alleging that she sustained a back injury on January 16, 2015. She submitted a brief undated statement that her truck had broken down for two days, and she had to load her mail satchel and walk three to four blocks to deliver the mail. Appellant stopped work on January 16, 2015 and returned to work on January 27, 2015. On the reverse side of the claim form, her supervisor stated that appellant had told management of back pain several days before the alleged incident.

Appellant submitted medical evidence including a form report dated January 16, 2015 indicating that she was treated by Dr. Jessica Wyant, Board-certified in emergency medicine, with a diagnosis of low back pain and thoracic spine strain. In a note dated January 20, 2015, Dr. Laura Asher, a family practitioner, indicated that appellant was unable to work from January 18 to 27, 2015. The record also contains a duty status report (Form CA-17) dated January 20, 2015 from an internist diagnosing back pain and thoracic spine sprain.³ The report indicated that appellant could return to light duty on January 27, 2015.

OWCP requested that appellant submit additional factual and medical evidence in a letter dated January 30, 2015. As to factual evidence, it noted that it was not clear whether she was claiming an injury during a single workday (traumatic injury) or over more than a single workday (an occupational disease or illness). Appellant was instructed to provide a detailed description of how the injury occurred and other relevant details. In addition, OWCP indicated that she should submit supporting medical evidence with an opinion on causal relationship between a diagnosed condition and the work incident.

In a report dated February 9, 2015 from Dr. Christina Hunter, an internist, it was noted that appellant was seen on that day for low back pain and referred for physical therapy.

By decision dated March 4, 2015, OWCP denied the claim for compensation. It found that appellant had not submitted sufficient factual and medical evidence to establish the claim.

LEGAL PRECEDENT

FECA provides for the payment of compensation for “the disability or death of an employee resulting from personal injury sustained while in the performance of duty.”⁴ The phrase “sustained while in the performance of duty” in FECA is regarded as the equivalent of the commonly found requisite in workers’ compensation law of “arising out of an in the course of employment.”⁵ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁶ In order to determine whether

³ The signature of the physician is illegible.

⁴ 5 U.S.C. § 8102(a).

⁵ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁶ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally “fact of injury” consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁷

OWCP procedures recognize that a claim may be accepted without a medical report when the condition is a minor one which can be identified on visual inspection.⁸ In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician’s affirmative statement is sufficient, and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.⁹

ANALYSIS

In the present case, OWCP found that appellant did not establish the factual element of her claim. Appellant had filed a traumatic injury claim alleging an injury on January 16, 2015 when she had to carry a mail satchel. The narrative statement she provided offered little description of the alleged incident or other relevant details. OWCP asked appellant to provide a detailed description of how the injury occurred in its January 30, 2015 letter. It was noted, for example, that she had referred to her truck had broken down for two days, and it was not clear whether she was alleging an injury that had been produced over one day or two days.¹⁰ Appellant did not submit an additional statement on the alleged employment incidents.

It is appellant’s burden of proof to establish her claim and this includes providing a detailed description of the alleged employment incident or incidents.¹¹ In this case appellant failed to respond to a request for a sufficient description of the incident and she has not established that the incident occurred as alleged.¹²

OWCP therefore properly denied the claim for compensation. The Board need not address the medical evidence, in this appeal.

⁷ See *John J. Carlone*, 41 ECAB 354, 357 (1989).

⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(c) (January 2013).

⁹ *Id.*, Chapter 2.805.3(d) (January 2013). Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

¹⁰ A traumatic injury is an injury caused by an incident or incidents within a single workday or shift. An occupational disease or illness is a condition produced by the work environment over more than one workday or shift. 20 C.F.R. §§ 10.5(ee) and (q).

¹¹ See *J.M.*, Docket No. 14-1809 (issued December 23, 2014).

¹² *Id.*

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 a back injury in the performance of duty on January 16, 2015.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 4, 2015 is affirmed.

Issued: September 16, 2015
Washington, DC

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

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

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