

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

---

**N.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Des Moines, IA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 15-1405  
Issued: September 14, 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  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On June 16, 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 Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish that she sustained a right wrist fracture causally related to the November 12, 2014 employment incident.

---

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

<sup>2</sup> The Board notes that appellant submitted additional evidence following the March 4, 2015 decision. Since the Board's jurisdiction is limited to evidence that was before OWCP at the time it issued its final decision, the Board may not consider this evidence for the first time on appeal. *See* 20 C.F.R. § 501.2(c); *Sandra D. Pruitt*, 57 ECAB 126 (2005). Appellant may submit that 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 November 14, 2014 appellant, then a 52-year-old rural mail carrier, filed a traumatic injury claim alleging that on November 12, 2014 she fractured her right wrist when she fell down in the performance of duty. She stopped work and returned to light duty on November 18, 2014.

Appellant also submitted a November 17, 2014 Form CA-16 authorization for examination and/or treatment by Margo Soppe, a certified physician assistant for a November 12, 2014 right wrist injury. Ms. Soppe related that on November 12, 2014 appellant was closing a garage door at work when she tripped and fell down on her right side. She diagnosed right wrist injury and indicated that appellant's condition was caused or aggravated by the described employment activity. Ms. Soppe stated that the injury happened at work when getting mail. She reported that appellant could return to regular work. Ms. Soppe also included a duty status report which demonstrated that appellant could return to work with no restrictions.

In a November 13, 2014 progress note, Ms. Soppe related that appellant sustained a right wrist injury at work when she fell down in the parking lot of the employing establishment. She described that appellant fell forward onto her wrists, right knee, and right hip. Upon examination, Ms. Soppe observed mild swelling and erythema on the ulnar surface of her right wrist. She reported tenderness upon palpation of the right wrist associated with the ulnar aspect. Range of motion demonstrated mild pain with ulnar deviation. Radial and ulnar pulses were +2/4. Ms. Soppe stated that an x-ray of the right wrist showed a possible fracture of appellant's scaphoid bone. She diagnosed right wrist injury.

On November 13, 2014 Dr. Stephen J. Burke, a Board-certified diagnostic radiologist, reported regarding x-ray examination of appellant's right wrist. He indicated that the x-ray findings suggested that appellant may have a nondisplaced fracture, with no other acute findings.

Appellant was also examined by Kerri VanEe, a certified nurse practitioner, who in a November 18, 2014 progress note and work status note, related appellant's complaints of right wrist pain particularly on the ulnar side. Ms. VanEe stated that appellant was at work when she tripped and fell down onto her right knee, hip, and bilateral upper extremities. Upon examination, she observed mild tenderness upon palpation over the dorsal side of the left wrist and mild tenderness over the ulnar side of the right wrist. Range of motion of bilateral wrists was mildly limited in all fields associated with mild discomfort. Ms. VanEe reported that appellant's symptoms and physical examination were suggestive of bilateral wrist sprains. She advised appellant to wear a brace for comfort. In a work status note, Ms. VanEe stated that appellant could return to part-time work with restrictions of lifting or carrying up to 10 pounds and wearing a wrist brace as needed.

In a November 18, 2014 x-ray report, Dr. David E. Jensen, a Board-certified diagnostic radiologist, stated that the examination was negative for left wrist fracture.

Appellant continued to receive medical treatment from Ms. VanEe. In progress reports dated December 1, 2014 and January 5, 2015 progress reports, she noted that she examined appellant for follow up of appellant's bilateral wrist sprains. Appellant reported that she felt 100 percent improvement in her left wrist and 50 percent improvement in her right wrist. Upon

examination of both wrists, Ms. VanEe observed no swelling, redness, ecchymosis, or bony tenderness upon palpation. Range of motion of the left wrist was normal without discomfort. Range of motion of the right wrist was mildly limited with mild discomfort. Ms. VanEe also reported normal strength of flexors and extensors of the left wrist and mildly diminished strength of the flexors and extensors of the right wrist. She diagnosed wrist injury and sprain.

By letter dated February 2, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish her traumatic injury claim. It requested additional medical evidence to demonstrate that she sustained a diagnosed condition causally related to the November 12, 2014 employment incident.

Appellant submitted a February 16, 2015 attending physician's report by Ms. VanEe, who again related appellant's history of injury on November 12, 2014. She noted that x-rays of both wrists were negative for fracture. Ms. VanEe diagnosed right wrist injuries and bilateral wrist sprains. She checked a box marked "yes" that appellant's condition was caused or aggravated by an employment activity. Ms. VanEe reported that appellant was partially disabled from November 18 to December 4, 2014.

In a decision dated March 4, 2015, OWCP denied appellant's claim. It accepted that the November 12, 2014 incident occurred as alleged, but denied her claim finding insufficient medical evidence to demonstrate that she sustained a diagnosed condition causally related to the accepted incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>4</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that 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.<sup>6</sup> There are two components involved in establishing the 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.<sup>7</sup> Second, the employee must submit evidence, generally only in the form of probative medical evidence, to establish that the employment

---

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>5</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>7</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

incident caused a personal injury.<sup>8</sup> An employee may establish that the employment incident occurred as alleged but fail to show that her disability or condition relates to the employment incident.<sup>9</sup>

Whether an employee sustained an injury in the performance of duty requires the submission of rationalized medical opinion evidence.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.<sup>11</sup> The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>12</sup>

### ANALYSIS

Appellant has alleged that on November 12, 2014 she sustained a right wrist fracture when she tripped and fell down at work.<sup>13</sup> OWCP accepted that the November 12, 2014 incident occurred as alleged, but denied the claim finding insufficient medical evidence to establish that she sustained a diagnosed condition causally related to the accepted incident. The Board finds that appellant did not meet her burden of proof to establish her traumatic injury claim.

Appellant was initially examined by Ms. Soppe, a certified physician assistant, and Ms. VanEe, a nurse practitioner. In progress notes and attending physician's reports dated November 13, 2014 to February 16, 2015, they described the November 12, 2014 employment incident and provided examination findings. Appellant was diagnosed with right wrist injury and bilateral wrist sprain. These reports, however, are of no probative value to establish appellant's claim as physician assistants and nurse practitioners, are not physicians as defined under FECA.<sup>14</sup>

Appellant also submitted various diagnostic reports dated November 13 and 18, 2014 from Drs. Burke and Jensen. Dr. Burke noted that the November 13, 2014 x-ray of appellant's right wrist may show a nondisplaced fracture. However, his diagnosis was of limited value

---

<sup>8</sup> *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

<sup>10</sup> *See J.Z.*, 58 ECAB 529 (2007); *Paul E. Thams*, 56 ECAB 503 (2005).

<sup>11</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 465 (2005).

<sup>12</sup> *James Mack*, 43 ECAB 321 (1991).

<sup>13</sup> While appellant submitted reports to the record also referencing left wrist symptoms, the claim was filed for a right wrist injury.

<sup>14</sup> Section 8102(2) of FECA provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2); *Roy L. Humphrey*, 57 ECAB 238 (2005).

because it was equivocal and speculative in nature.<sup>15</sup> Furthermore, the Board has found that a physician must provide a narrative description of the identified employment incident and a reasoned opinion on whether the employment incident described caused or contributed to appellant's diagnosed medical condition.<sup>16</sup> Dr. Burke's report did not provide this information.

As Dr. Jensen's report reviewed appellant's left wrist and noted that the test results were negative for wrist fracture. It is of no probative value relative to appellant's claim for right wrist injury.

The issue of causal relationship is a medical question that must be established by probative medical opinion from a physician.<sup>17</sup> Because appellant has not provided such probative medical evidence in this case, the Board finds that she did not meet her burden of proof to establish 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.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof to establish that she sustained a right wrist fracture causally related to the November 12, 2014 employment incident.

---

<sup>15</sup> Medical opinions that are speculative or equivocal in character are of little probative value. *See Kathy A. Kelley*, 55 ECAB 206 (2004).

<sup>16</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>17</sup> *W.W.*, Docket No. 09-1619 (issued June 2, 2010); *David Apgar*, *supra* note 8.

**ORDER**

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

Issued: September 14, 2015  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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