



## ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on August 13, 2013, as alleged.

## FACTUAL HISTORY

On August 14, 2013 appellant, then a 49-year-old telephone operator, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her hands, wrists, shoulder, neck, and left side of her head while “using work equipment” that day. On the claim form appellant’s supervisor indicated that appellant was not at work on the date of the alleged injury. The supervisor also noted that she had used leave on August 14, 15, and 20 to 23, 2013.

In a letter dated September 4, 2013, OWCP advised appellant of the deficiencies in the claim and provided her the opportunity to submit additional evidence. Appellant was asked to provide a written statement, which described in detail the alleged work injury and surrounding circumstances. She was also asked to provide medical evidence from a qualified physician which provided a firm diagnosis and explained with medical rationale how her federal work duties on the date in question caused an injury. Appellant was afforded 30 days to provide this evidence.

In a September 11, 2013 statement, appellant advised that there was a mistake on the Form CA-1 with regard to the date of injury. She asserted that the injury took place on August 13, 2013, not August 14, 2013. Appellant stated that, when she returned to work on August 15, 2013, she was in excruciating pain and had informed her supervisor, occupational health, and human resources of the correct date of injury. She requested that the date of injury be changed to reflect the date of August 13, 2013 as the correct date of injury.

In September 11 and 30, 2013 statements, appellant described the circumstances surrounding the alleged work injury. She indicated that the injury occurred on August 13, 2013 at the end of her shift when she was preparing to leave for the day. Appellant was removing large reference books that she had been using from her cubicle. She noted that this was a repetitive task and that some of the books weighed five pounds. Appellant also had to unplug her headset and install another headset to the switchboard console. While performing these tasks she felt a severe pain in her left hand and heard her bones crack. The pain traveled up appellant’s left shoulder and to her neck. She wrapped her wrist with an ace bandage. Appellant experienced burning pain in both palms, especially on the left, and was unable to sleep at night due to the pain in her palms and the left side of her head. She indicated that she had another claim, OWCP file number xxxxxx033 with the date of injury of February 19, 2013, and that Dr. M. Miranda, her rheumatologist/bone specialist had released her to return to work.

Appellant advised that she tried to have the employing establishment correct the date of injury to reflect that it had occurred on August 13, 2013. She indicated that she did not work on August 14, 2013 and returned to work on August 15, 2013 when she reported the injury to her supervisor. Appellant noted that she tried to complete her shift on August 13, 2013 despite the excruciating pain in her hands, wrists, and radiating pain to her left shoulder and left side of neck

and head. She indicated that the pain impaired her cognitive ability. A work schedule identifying the employees that were present at the time of appellant's injury was provided.

Appellant submitted a telephone operator duty schedule for the date range August 11 to 24, 2013. Evidence submitted included a February 19, 2013 return to regular duty slip from an unknown physician from the occupational health clinic of the employing establishment's hospital and OWCP-5c form dated March 7 and April 4, 2013 signed by Dr. Michael J. Garcia, a Board-certified orthopedic surgeon.

By decision dated October 8, 2013, OWCP denied the claim as fact of injury had not been established. It found that the factual evidence did not support that an injury occurred on the revised date of injury of August 13, 2013 and there was no medical evidence containing a medical diagnosis in connection with the alleged event.

On November 8, 2013 OWCP received appellant's November 5, 2013 request for reconsideration. On November 14, 2013 it received her November 5, 2013 request for an oral hearing before an OWCP hearing representative. The oral hearing request was postmarked November 7, 2013. In a November 5, 2013 letter, appellant indicated that she had mistakenly put the date of August 14, 2013 on the CA-1/CA-2 worksheet, but when she noticed her error, had put "13" underneath the injury date. A copy of the CA-1/CA-2 worksheet noted that the date and time of injury/illness was listed as August 14, 2013 with the 14 crossed through and the number 13 written beneath it. The complete worksheet was not provided.

A telephonic hearing was conducted on July 16, 2014. Appellant testified that she did not fill out the Form CA-1 and did not see the completed form. She only filled out the worksheet and, when she noticed that she had written the incorrect date of injury, she crossed it out and wrote in the correct date of August 13, 2013. Appellant described the alleged incident and reiterated that this had occurred on August 13, 2013. She did not report the accident when it occurred as she thought she would go home, rest and be ready for work the next day; however, she had to call in sick the following day as she was in a lot of pain and was unable to function. On March 15, 2013 appellant went to work 30 minutes early and informed her supervisor about the incident and explained why she was out of work the prior day. She was told to go to occupational health, where she filled out the worksheet. Appellant alleged that the employing establishment never informed her that she could elect to be treated by a physician of her choice; rather, she was told that she could return to her original physicians at Florida Orthopedics. She testified that, when she realized that the wrong date of injury had been reported to OWCP, she tried to have this corrected. Appellant indicated that she had sustained a prior work injury at work on February 19, 2013 OWCP file number xxxxxx303, which was approved for a left knee and right wrist injury, and that her current injury was not related to her prior injury.

Diagnostic testing and reports received included: September 24, 2013 cervical, lumbar, and thoracic ultrasound results, September 24, 2013 nerve conduction study results, September 26, 2013 thoracic outlet syndrome evaluation, September 28, 2013 electrodiagnostic test results, March 27, 2014 cardiovascular test results, and May 2, 2014 cardiovascular stress test results.

An August 27, 2013 work excuse note from a physician with an illegible signature indicated that appellant had severe pain and was unable to work from August 13 through 27, 2013.

In an initial report of September 17, 2013, Dr. Claude Barosy, a general practitioner, noted the history of injury as follows: “[Appellant] states the pain started on August 14, 2013 when she was at work. She was at the end of her shift at around 3:40. [Appellant] lifted some heavy books including a PDR and, as she was placing them on the shelf, she felt a pop in her neck and felt pain in her hands and wrists, mostly the left side, with pain running down her left arm.... She thought the pop was minor, but when she got home she could n[o]t raise her left shoulder.” Dr. Barosy diagnosed internal derangement of right hand, and wrist, internal derangement of the left hand and wrist, head trauma, internal derangement of the left shoulder joint, and scheduled magnetic resonance imaging scan and other diagnostic testing of the cervical spine, left shoulder, and both hands and wrists.

In follow-up reports dated October 17, 28, and 30, 2013, Dr. Barosy indicated that he reviewed all of appellant’s medical records, diagnostic tests and reports of the diagnostic tests as well as all prescriptions written for her. He indicated that she sustained injury as a result of a slip and fall while working for the employing establishment on August 13, 2013: internal derangement of the right hand/wrist joints; internal derangement of the right and left shoulder joints; internal derangement of the left hand/wrist joints; internal derangement of the left knee joints, and tear of the medial and lateral meniscus of the left knee and rheumatoid arthritis.

In a March 20, 2014 report, Dr. Ginige Swanthri De Sika, an internist specializing in rheumatology, noted appellant’s previous treatment for rheumatoid arthritis. She noted that appellant was a switch board operator, who had not worked since August 2013.

In a December 19, 2013 report, Robert R. Reppy, D.O., a preventative medicine specialist, noted injury as August 14, 2013 and presented examination findings. He diagnosed internal derangement of the right hand and wrist joints, internal derangement of the right and left shoulder joints, internal derangement of the left hand and wrist joints, internal derangement of the left knee joint, tear of the medial and lateral meniscus of the left knee, rheumatoid arthritis, and carpal tunnel syndrome per September 27, 2013 nerve conduction velocity test. In an April 18, 2014 report, Dr. Reppy diagnosed several conditions including rheumatoid arthritis, cervical disc disease, bilateral internal derangement of the wrists, bilateral carpal tunnel syndrome, several shoulder and back conditions. He indicated that appellant originally injured herself on the job on February 19, 2013 and was known to have rheumatoid arthritis and degenerative changes of her wrists along with conditions concerning her arms and shoulders. Dr. Reppy opined that those conditions were going to cause some permanent disability in her hands and wrists and he did not feel she was capable of returning to work. In an April 18, 2014 form, he noted the date of injury as August 14, 2013 and diagnosed carpal tunnel syndrome and impingement (unreadable).

In reports dated March 5 and 6, and May 2, 2014 report, Dr. Eduardo L. Gonzalez, a Board-certified family practitioner, noted the date of injury as August 14, 2013 and assessed multiple conditions. In his May 2, 2014 report, he indicated that appellant has severe symptoms intermittently, but could return to work with restrictions as recommended by Dr. Reppy on

April 18, 2014. Dr. Gonzalez indicated that she must receive reasonable accommodations including no overnight and work from Monday through Friday. In a May 2, 2014 form, he noted the date of injury as August 14, 2013 and diagnosed rheumatoid arthritis.

The employing establishment responded to the hearing transcript with a statement and additional documentation challenging the claim. In a July 16, 2014 letter, it rebutted appellant's statements made at the hearing. The employing establishment related that, contrary to her testimony, she was provided information regarding her right to elect a physician at the time of the reported injury. Appellant signed a form designating Amerimed Diagnostic as the physician of choice and noted that her first appointment was on August 19, 2013. She was also aware of the claim filing process as she had a prior accepted work injury with OWCP. For the current claimed injury, appellant signed a release of information form on August 15, 2013, indicating that the date of injury was August 14, 2013. She also signed the Form CA-1 on August 29, 2013 in blue ink. The employing establishment advised that appellant was not required to use books for performance of her duties as all information was on-line on her computer. Also, as a convenience, the call schedule was printed out and kept on their desk daily. The employing establishment asserted that there was no evidence that appellant was injured by work equipment. It noted that she sent an e-mail dated September 10, 2014, indicating that she was injured "while attempting technical functions" and identified the date of injury as August 13, 2013. Also, appellant did not provide her statement asking for a change in the date of injury until after her claim was challenged by the employing establishment and she received a letter from OWCP. The employing establishment further stated that while she had submitted documentation dated August 13 through 27, 2013, which excused her from work during that period, she in fact worked August 13, 15, and 18, 2013.

A signed copy of appellant's Form CA-1 noting date of injury of August 14, 2013 was received along with a copy of appellant's schedule and leave taken from August 11 through 24, 2013. A December 11, 2013 e-mail from the employing establishment indicated that she called in sick on August 14, 2013.

By decision dated October 3, 2014, an OWCP hearing representative affirmed the denial of the claim.

On September 25, 2015 appellant, through counsel, requested reconsideration based on Dr. Barosy's October 28, 2013 report, which was previously of record. Reports and diagnostic testing previously of record were submitted.

Reports from Dr. Samy Bishai, an orthopedic surgeon, dated August 19 and October 2, 2014, and January 21, 2015 were received. In his August 19, 2014 report, he noted that appellant suffered an injury at work during the course of her employment on August 13, 2013. Dr. Bishai indicated that she was returning heavy procedure manuals from her work cubicle to the bookcase and felt severe, sharp pain that was sudden in both wrists and hands. The pain went up appellant's arm and all the way to her shoulders and neck area. She also experienced headaches. Appellant went home after the incident occurred and called in the next day as she was unable to work. She was subsequently seen by her rheumatologist who told her that she was suffering from a flare-up of rheumatoid arthritis in her hands. Dr. Bishai noted appellant's past history of a work-related injury on February 19, 2013 that had been approved and for which she was

receiving treatment for rheumatoid arthritis of the left knee joint. He indicated that the August 13, 2013 injury was a case of flare-up and aggravation of rheumatoid arthritis in her hands, wrists, and upper extremities including the shoulders as well as her neck. Dr. Bishai explained that the history and appellant's statement regarding how the accident occurred and how the symptoms developed were typical for cases of rheumatoid arthritis and a flare-up could occur quite easily and that this was what happened in her case. He opined that she suffered a work-related aggravation of her preexisting condition of rheumatoid arthritis affecting her wrists and hands and her shoulders and cervical spine (neck) as it occurred while appellant was working. In the October 2, 2014 report, Dr. Bishai reiterated that the aggravation of appellant's rheumatoid conditions of the wrists, hands, shoulders, and cervical spine was work related. In a January 21, 2015 report, he opined that she was disabled from work in her current position because her rheumatoid arthritis had affected her use of the upper extremities as well as her left knee and left ankle joint. Dr. Bishai indicated that appellant has rheumatoid arthritis of both right and left hands (aggravation); cervical disc syndrome, bilateral carpal tunnel syndrome; and internal derangement of the right and left shoulder joints.

By decision dated November 27, 2015, OWCP denied modification of its prior decision. It found that there was still no evidence of record to establish that appellant was injured at the time, place, and in the manner alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>4</sup>

OWCP regulations, at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.<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 she actually experienced the employment incident at the time, place, and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>6</sup>

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<sup>3</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>4</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

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

To determine whether 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. An employee has the burden of establishing the occurrence of an injury at the time, place, and in the manner alleged by a preponderance of the reliable, probative, and substantial evidence.<sup>7</sup> An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and her subsequent course of action.<sup>8</sup> Such circumstances 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 cast doubt on an employee's statements in determining whether she has established a *prima facie* case.<sup>9</sup> However, an employee's statement alleging 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>10</sup>

### ANALYSIS

In the instant case, the Board finds that appellant has failed to establish fact of injury because of inconsistencies in the record that cast serious doubt as to whether the specific events or incidents of August 13 or 14, 2013 occurred at the time, place, and in the manner alleged.<sup>11</sup>

OWCP denied the claim because the evidence failed to support that appellant was injured at work, at the time, place, and in the manner alleged. There were inconsistencies in the evidence of record provided by appellant describing the circumstances surrounding the alleged injury, the date of injury, and the nature of alleged injury.

The Board finds the evidence most contemporaneous to the alleged August 13, 2013 employment injury to be of greatest probative value and, based on the many inconsistencies, finds that appellant has failed to establish that the claimed incident occurred at the time, place, and in the manner as alleged. Appellant initially reported a date of injury of August 14, 2013 and the first medical report of record from Dr. Barosy, dated September 17, 2013, also indicated a date of injury of August 14, 2013. After the employing establishment noted that she was not at work on August 14, 2013 she then indicated that she was injured on August 13, 2013 and had made a mistake about the date. Appellant stated that while she initially put the date of injury as

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<sup>7</sup> *Charles B. Ward*, 38 ECAB 667 (1987).

<sup>8</sup> *See Gene A. McCracken*, 46 ECAB 593 (1995); *Joseph H. Surgener*, 42 ECAB 541 (1991).

<sup>9</sup> *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>10</sup> *Thelma S. Buffington*, 34 ECAB 104 (1982).

<sup>11</sup> *Gene A. McCracken*, *supra* note 8; *Mary Joan Coppolino*, 43 ECAB 988 (1992) (where the Board found that discrepancies and inconsistencies in a claimant's statements describing the injury created serious doubt that the injury was sustained in the performance of duty).

August 14, 2013 on the CA-1 worksheet she had scratched it out to indicate it was August 13, 2013. However, she did not initial the change of date and subsequently signed the CA-1 form which noted the date of injury as August 14, 2013. When appellant called in sick on August 14, 2013, she failed to report that she had been injured the day before. Although she testified that coworkers knew of her injury when it occurred, she provided no statements from witnesses to corroborate her allegations of a work injury on August 13, 2014.

Initial medical evaluation by Dr. Barosy took place on September 17, 2013, almost a month after the alleged injury date. He reported a date of injury of August 14, 2013; not August 13, 2013 as later asserted by appellant. Dr. Barosy indicated that she was injured lifting books at work. This differed from appellant's description on the CA-1 form where she indicated that she was injured "using work equipment." While appellant later clarified that she was injured lifting books and disconnecting her headset, the employing establishment asserted that there was no reason for her to be engaged in such activity as all the information she needed could be acquired on-line.

Furthermore, the medical evidence of record is not well-reasoned, not based on a clear or accurate history of injury, and is insufficient to establish that the claimed medical conditions are caused by appellant's work duties on August 13, 2013. In Dr. Barosy's follow-up reports of October 17, 28, and 30, 2013, he reported a date of injury as August 13, 2013, but provided no explanation for the changed date. Furthermore, he indicated that the diagnosed conditions were due to a work-related slip and fall. A slip and fall was not claimed in this case. The record reflects that appellant has another claim for a work-related slip and fall on February 19, 2013. The other medical reports of record from Drs. Reppy and Gonzalez report the date of injury as August 14, 2013.

While Dr. Bishai notes the date of injury as August 13, 2013 and provides a history of injury most consistent with appellant's description of moving books, his reports were prepared a year after the alleged injury and fail to mention her allegations regarding the headset. Additionally, he only recited the facts as told to him by appellant and did not offer any independent evidence that she injured her hands, wrists, shoulders, and neck on August 13, 2013. Although Dr. Bishai indicated that appellant suffered from preexisting rheumatoid arthritis and opined that the August 13, 2013 work incident caused a flare-up and an aggravation of the arthritis in her hands, wrists, shoulders, and neck, there still exist significant discrepancies as to when and how the injury occurred. The Board has held that medical opinion based upon an incomplete history have little probative value.<sup>12</sup> Thus, Dr. Bishai's reports are insufficient to establish fact of injury.

The remainder of the medical evidence, including diagnostic test reports, fails to provide an opinion as to the time, place, and manner of appellant's injury.<sup>13</sup> Also the medical evidence

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<sup>12</sup> *Frank Luis Rembisz*, 52 ECAB 147 (2000) (medical opinions based on an incomplete history or which are speculative or equivocal in character have little probative value).

<sup>13</sup> *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

concerning appellant's prior work injury or medical reports which predate this current claim are irrelevant.

Given the above discrepancies in the factual evidence of record, the Board finds that appellant has not met her burden of proof to establish that an alleged August 13, 2013 incident at work occurred as described.

On appeal, counsel argues OWCP's decision is contrary to fact and law. For the reasons set forth above, appellant has not established fact of injury as there are substantial conflicts in determining the date of the alleged injury and how it occurred.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on August 13, 2013, as alleged.

**ORDER**

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

Issued: August 22, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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