



## **FACTUAL HISTORY**

On January 31, 2013 appellant, then a 48-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 8, 2012 she injured her left wrist and shoulder “after lifting [a] heavy parcel and delivering cluster boxes.” She stopped work on August 8, 2012 and did not return. The employing establishment controverted the claim as appellant had not reported her traumatic injury until January 30, 2013. It noted that she had previously filed a recurrence of disability beginning August 8, 2012 and, after it was denied, filed the traumatic injury claim.

Appellant had a prior accepted claim for a work injury on January 4, 2012, assigned OWCP file number xxxxxx080. The claim had been accepted for left forearm and shoulder strains. On September 19, 2012 OWCP terminated compensation benefits. The employing establishment controverted this traumatic injury claim. It advised that appellant had returned to limited-duty work on August 3, 2012, stopped work on August 8, 2012 and filed a claim for recurrence of disability beginning August 8, 2012 under file number xxxxxx080. By decision dated October 25, 2012, OWCP denied the claim for recurrence as it found that the disability was not causally related to the accepted conditions. The employing establishment indicated that appellant was now filing a new traumatic injury claim for the same date. It enclosed the recurrence of disability (Form CA-2a) for file number xxxxxx080, noting that it addressed the same parts of the body. The employing establishment argued that the only difference was that on the recurrence form, appellant stated that on August 8, 2012 she was still weak and every time she reached for mail she felt a pain in her shoulder and that she had no other injuries. On the newly filed traumatic injury claim she indicated that on August 8, 2012 she had lifted a heavy box (inconsistent stories).

In the current traumatic injury claim, by letter dated February 22, 2013, OWCP informed appellant that the evidence was insufficient to support the claimed August 8, 2012 traumatic injury and asked that she submit additional factual and medical information, including a reasoned report from her attending physician addressing the relationship between any diagnosed condition and the identified work incident.

In an undated statement received by OWCP on March 22, 2013, appellant related that she had initially filed the wrong claim.<sup>3</sup> She maintained that she sustained an injury as the result of repetitive action casing and delivering mail and lifting boxes weighting 15 to 20 pounds. Appellant indicated that she was supposed to work light duty but her supervisor instructed her to perform her usual employment, which caused a new injury to her left wrist and shoulder.

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<sup>3</sup> In a progress report dated March 9, 2013, Dr. Steven Stecker, a Board-certified orthopedic surgeon, discussed appellant’s continued complaints of pain in her left shoulder and wrist. He related, “[She] states that with repetitive lifting and overhead activity she has significant pain in the left upper extremity, mainly related to the left shoulder and left wrist.” Dr. Stecker noted that a magnetic resonance imaging (MRI) scan of the left shoulder was unremarkable and that the MRI scan of the left wrist showed basal joint osteoarthritis, degenerative changes, and a partial tear in the triangular fibrocartilage. He found that appellant’s “complaints are related to her prior injury” and recommended a diagnostic left shoulder arthroscopy.

By decision dated April 3, 2013, OWCP denied appellant's claim for a traumatic injury finding that the medical evidence was insufficient to establish a diagnosed condition as a result of the accepted August 8, 2012 work incident. In another decision also dated April 3, 2013, it found that she had also not established a recurrence of disability as she had not established a new traumatic injury on August 8, 2012.

On April 30, 2013 appellant requested a review of the written record.<sup>4</sup> In an undated statement received May 6, 2013, she advised that she had sustained an injury on January 4, 2012 and a new injury on August 8, 2012. Appellant described her injury as occurring after casing and delivering a full route of mail which required repetitive movements and delivering boxes weighing 15 to 20 pounds. She advised that her statement was not inconsistent as she listed functions that were part of route operation. Appellant maintained that she sought immediate medical treatment.

By decision dated September 5, 2013, an OWCP hearing representative affirmed the April 3, 2013 decision as modified to show that appellant had not factually established the occurrence of the August 8, 2012 work incident. She found that appellant's statements were inconsistent and the medical evidence did not describe a new injury on August 8, 2012.

In a statement dated June 4, 2014, appellant related:

"I sustained an on-the-job injury on January 4, 2012, which was accepted as compensable by OWCP. In August of 2012, I had sufficiently recovered from this injury to return to duty, with restrictions. I began the limited duty assignment on August 6, 2012, and worked through August 8, 2012. After the third day of work, I had to seek medical attention due to the worsening of the earlier conditions.

"On August 8, I was instructed to deliver my route, without assistance, and the work on that date aggravated my condition because at least some of it should not have been assigned to me, given my restrictions."

Appellant described her work duties in detail and noted that before the end of the day she felt pain whenever she reached or lifted mail. She sought medical treatment on that date. Appellant received instructions to file a recurrence claim (Form CA-2a) and only later learned that she should have filed a traumatic injury claim because of her exposure to new work factors.

On June 27, 2014 appellant, through her representative at the time, requested reconsideration. He related that she had initially filed a recurrence of disability beginning

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<sup>4</sup> In a report dated April 16, 2013, Dr. Stecker related that he was treating appellant "for a left shoulder impingement and left wrist tendinitis that she sustained while at work on January 4, 2012 after lifting a mail cart out of a jam." He indicated that she could perform light duty but that working repetitively overhead aggravated her symptoms. On April 22, 2013 Dr. Stecker performed an arthroscopic subacromial decompression of the left shoulder with acromioplasty and lysis of subacromial adhesions. In a report dated April 24, 2013, Dr. Ross J. Fox, a Board-certified orthopedic surgeon, obtained a history of appellant twisting her left arm and wrist a year ago while rolling a cart filled with mail that became unbalanced. He diagnosed mild left carpal tunnel syndrome and mild left osteoarthritis of the carpometacarpal (CMC) joint of the left thumb.

August 8, 2012 based on incorrect advice as her condition did not recur spontaneously, but as the result of exposure to new work factors. The representative noted that on August 8, 2012 management assigned her to her regular work duties, as reflected in her time and attendance record for that date. He asserted:

“The claimant filed a Form CA-1 because she experienced a medical condition as the result of excessive exertion during the course of a single workday. Her description of the individual tasks which contributed to the condition have been characterized as ‘inconsistent’ and therefore of ‘little probative value.’ This ignores the fact that a traumatic injury need not be a single, momentary event, but can also be a ‘series of events’ within one calendar day and/or work tour. The claimant’s description of how reaching, lifting, and carrying caused her injury are not contradictory, they are descriptive of the contributing factors that precipitated her disability.”

By decision dated September 23, 2014, OWCP denied modification of its September 5, 2013 decision. It found that as appellant provided different histories of injuries on the traumatic injury claim form and the notice of recurrence of disability, she had not factually established the occurrence of the August 8, 2012 work incident.

On appeal appellant related that she was wrongly instructed to file a recurrence of disability instead a new injury claim. She indicated that being back at work for three days performing her usual employment caused her condition. When OWCP denied appellant’s recurrence of disability it instructed her to file a traumatic injury claim. Appellant related that on August 8, 2012 she felt pain throughout the day while delivering her route, especially after delivering cluster boxes.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden to establish the essential elements of his or 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>6</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>7</sup>

To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether “fact of injury” is established. First, the employee has the burden to demonstrate 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>8</sup> Second, the employee

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

<sup>6</sup> *Alvin V. Gadd*, 57 ECAB 172 (2005); *Anthony P. Silva*, 55 ECAB 179 (2003).

<sup>7</sup> *See Elizabeth H. Kramm (Leonard O. Kramm)*, 57 ECAB 117 (2005); *Ellen L. Noble*, 55 ECAB 530 (2004).

<sup>8</sup> *David Apgar*, 57 ECAB 137 (2005); *Delphyne L. Glover*, 51 ECAB 146 (1999).

must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.<sup>9</sup> An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.<sup>10</sup>

In order 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.<sup>11</sup> An injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.<sup>12</sup> An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>13</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, if otherwise unexplained, cast doubt on an employee's statements in determining whether a case has been established.<sup>14</sup> However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.<sup>15</sup>

### ANALYSIS

On January 31, 2013 appellant filed a claim for a traumatic injury alleging that on August 8, 2012 she injured her left shoulder and wrist when lifting a heavy package and delivering cluster boxes. Prior to filing her traumatic injury claim, she also had alleged that on that same date she had sustained a recurrence of disability on August 8, 2012 under OWCP file number xxxxxx080. Appellant attributed her recurrence of disability to reaching while delivering mail. The employing establishment controverted the claim as she had not reported a traumatic injury until January 30, 2013 and as she had initially maintained that she had experienced a recurrence of disability that date.

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<sup>9</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>10</sup> *Id.*

<sup>11</sup> *See Louise F. Garnett*, 47 ECAB 639 (1996).

<sup>12</sup> *See Betty J. Smith*, 54 ECAB 174 (2002).

<sup>13</sup> *Id.*

<sup>14</sup> *Linda S. Christian*, 46 ECAB 598 (1995).

<sup>15</sup> *Gregory J. Reser*, 57 ECAB 277 (2005).

Due to appellant's inconsistent description of the August 8, 2012 incident, OWCP determined that she had not factually established her traumatic injury claim. The Board, however, finds that the evidence does not contain inconsistencies sufficient to cast serious doubt on appellant's version of the employment incident. Appellant explained in a statement dated May 6, 2013 that she initially sustained an injury on January 4, 2012 and then sustained a new injury on August 8, 2012. She attributed the injury on August 8, 2012 to performing repetitive actions delivering mail and lifting boxes weighing 15 to 20 pounds. Appellant asserted that the statement on her traumatic injury claim form was not inconsistent with the description of her alleged recurrence of disability as on both forms she described actions necessary to prepare and deliver a route. In a June 4, 2014 statement, she related that on that date she experienced pain reaching for or lifting mail. Appellant claimed that she had received instructions to file a recurrence of disability but later learned that she should have filed a traumatic injury claim, as she had been exposed to new work factors. She stopped work on August 8, 2012. An employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.<sup>16</sup> Under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence. The Board, therefore, finds that the evidence of record is sufficient to establish that the August 8, 2012 incident occurred at the time, place, and in the manner alleged.

The Board, consequently, will remand the case to OWCP to determine whether appellant sustained an injury due to the August 8, 2012 work incident. Additionally, it appears that OWCP's correspondence dated February 22, 2013 indicates that there is medical evidence relevant to the issue of whether appellant sustained an injury on August 8, 2012 contained in OWCP file number xxxxxx080. OWCP procedures provide for combining files in claims pertaining to the same area of the body and where correct adjudication depends on cross-referencing between files.<sup>17</sup> Upon return of the case record, OWCP should combine the current file number with OWCP file number xxxxxx080. Following this and such further development as deemed necessary, it should issue an appropriate decision.

### **CONCLUSION**

The Board finds that the case is not in posture for decision.

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<sup>16</sup> *Id.*

<sup>17</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8(c) (February 2000).

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 23, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 1, 2016  
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