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

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| **S.M., Appellant** | ) | |
| **and** | ) | **Docket No. 16-0070** |
| | ) | **Issued: March 21, 2016** |
| **U.S. POSTAL SERVICE, WESTCHESTER POSTAL & DISTRIBUTION CENTER, White Plains, NY, Employer** | ) | |

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

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On October 13, 2015 appellant filed a timely appeal from a September 1, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over merits of this case.

### ***ISSUE***

The issue is whether appellant has met her burden of proof to establish an injury causally related to the accepted July 9, 2015 employment incident.

### ***FACTUAL HISTORY***

On July 10, 2015 appellant, then a 25-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on July 9, 2015 she experienced pain in her back while lifting a

[1] 5 U.S.C. § 8101 *et seq.*

tray of magazines out of the postcon, which caused her to drop the tray and bend her wrist. She claimed injury to her back, neck, and wrist. Appellant stopped work on July 10, 2015. In statements dated July 9 and 10, 2015, she described the July 9, 2015 employment incident.

Appellant submitted a July 13, 2015 report from Dr. Gus Sofos, a chiropractor. In this report Dr. Sofos provided appellant's history of injury, and noted her current complaints and examination findings. He diagnosed cervical and thoracic segmental dysfunction. Dr. Sofos did not indicate whether an x-ray was performed.

In a July 9, 2015 hospital record, Dr. Erica Cavallo-Olivo, a Board-certified emergency physician, diagnosed cervical strain, low back strain, lumbosacral strain, thoracic strain, and wrist pain. She also provided discharge instructions sheets and a work excuse note from July 9 to 11, 2015.

On July 31, 2015 OWCP informed appellant that the evidence of record was insufficient to support her claim. Appellant was advised of the medical evidence necessary to support her claim and was asked to submit, within 30 days, a well-rationalized opinion from her physician regarding the cause of her condition.

In response, OWCP received a July 23, 2014 request for a magnetic resonance imaging (MRI) scan from Dr. Zeeshan Solangi, an internist. It also received return to work notes dated July 17 and August 5 and 19, 2015 from Dr. Sofos, which noted cervical and thoracic pain due to the work injury.

On August 7, 2015 OWCP also received a Form OWCP-5c, from Dr. Leanne Forman, a Board-certified internist, wherein she advised that appellant was capable of returning to work in her usual position with no restrictions. No diagnosis was provided.

By decision dated September 1, 2015, OWCP accepted that the alleged employment incident occurred as alleged, but denied the claim as the medical evidence did not establish that appellant sustained an injury causally related to the accepted incident.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA 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 timely filed within the applicable time limitation period of FECA, that an injury[2] was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[3]

[2] OWCP's regulations 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. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

[3] *See T.H.*, 59 ECAB 388 (2008). *See also Steven S. Saleh*, 55 ECAB 169 (2003); *Elaine Pendleton*, 40 ECAB 1143 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. A fact of injury determination is based on two elements. 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 sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury. An employee may establish that the employment incident occurred as alleged but fail to show that his or her condition relates to the employment incident.[4]

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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.[5]

An award of compensation may not be based on surmise, conjecture, or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.[6] To establish causal relationship, she must submit a physician's report, in which the physician reviews the factors of employment identified by appellant as causing her condition and, taking these factors into consideration as well as findings upon examination and her medical history, state whether these employment factors caused or aggravated her diagnosed condition.[7]

## ***ANALYSIS***

OWCP accepted that the July 9, 2015 incident occurred as alleged. The Board however affirms the denial of the claim, as appellant did not submit sufficient medical evidence to support that she sustained an injury causally related to the July 9, 2015 employment incident.[8]

While in the July 9, 2015 hospital record Dr. Cavallo-Olivo provided diagnoses of cervical, lumbar, and thoracic sprain. She however did not provide a history of the July 9, 2015 employment incident, nor did she provide a medical opinion as to how the July 9, 2015 employment incident caused the diagnosed conditions. As such, her report is of limited probative value.[9] Furthermore, the diagnosis of wrist pain is not a firm medical diagnosis. The Board has found that pain is a symptom and not a compensable medical diagnosis.[10]

[4] *Id. See Shirley A. Temple*, 48 ECAB 404 (1997); *John J. Carlone*, 41 ECAB 354 (1989).

[5] *Id. See Gary J. Watling*, 52 ECAB 278 (2001).

[6] *William S. Wright*, 45 ECAB 498, 503 (1993).

[7] *Calvin E. King*, 51 ECAB 394, 401 (2000).

[8] *See Robert Broome*, 55 ECAB 339 (2004).

[9] *See Manuel Gill*, 52 ECAB 282 (2001).

[10] *V.S.*, Docket No. 14-2028 (issued June 3, 2015).

Accordingly, Dr. Cavallo-Olivo's July 9, 2015 hospital record is insufficient to establish appellant's claim.

Several medical notes were received from Dr. Sofos, a chiropractor. However, Dr. Sofos is not a qualified physician under FECA. Section 8101(2) of FECA[11] provides that the term physician, as used therein, includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist, and subject to regulation by the Secretary.[12] There is no indication that Dr. Sofos obtained an x-ray to demonstrate the existence of a specific subluxation of the spine. He is therefore not considered a physician under FECA and he is not competent to render a medical opinion on the issue of causal relationship.[13] Thus, Dr. Sofos' reports are insufficient to establish appellant's claim.

The other evidence of record, including the request for an MRI scan and Dr. Forman's Form OWCP-5c report, contain no diagnoses of appellant's conditions, and no opinion on causal relationship. These additional documents are therefore insufficient to establish appellant's claim.

Consequently, appellant has offered insufficient medical evidence to establish her claim. As noted, causal relationship is a medical question that must be established by probative medical opinion from a physician.[14] The physician must accurately describe appellant's work duties and medically explain the pathophysiological process by which these duties would have caused or aggravated her condition.[15] Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

On appeal, appellant asserts that the medical evidence submitted supports her claim. As noted, the evidence of record is insufficient to establish causal relationship. Appellant has the burden to establish causal relationship through the submission of rationalized medical opinion evidence.[16]

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

[11] 5 U.S.C. § 8101(2).

[12] *See* 20 C.F.R. § 10.400(e) (defining reimbursable chiropractic services).

[13] *See generally Theresa K. McKenna*, 30 ECAB 702 (1979).

[14] *I.J.*, 59 ECAB 408 (2008).

[15] *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

[16] *John J. Montoya*, 54 ECAB 306 (2003).

## ***CONCLUSION***

The Board finds that appellant did not meet her burden of proof to establish an injury on July 9, 2015 causally related to the accepted employment incident.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the September 1, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 21, 2016
Washington, DC

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

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

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