

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

B.G., Appellant

and

**U.S. POSTAL SERVICE, TWENTY SECOND
STREET STATION, Chicago, IL, Employer**

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**Docket No. 16-1454
Issued: November 22, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 6, 2016 appellant filed a timely appeal from a May 26, 2016 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 an injury in the performance of duty.

On appeal, appellant describes her symptoms, medical treatment, and work duties that she believes caused her claimed bilateral shoulder injury.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted new evidence with her appeal. The Board, however, is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On March 15, 2016 appellant, then a 52-year-old city carrier, filed an occupational disease claim (Form CA-2) under File No. xxxxxx518 alleging that she first became aware of her “other occupational illnesses” and their relation to her federal employment on April 29, 2015.³

In an April 4, 2016 letter, OWCP notified appellant of the deficiencies of her claim and requested that she submit factual and medical evidence, including a detailed description of the employment-related activities that she believed contributed to her claimed medical condition, how often she performed the described activities, and a physician’s opinion explaining how her work-related exposure contributed to her medical condition. It afforded appellant 30 days to provide the requested evidence.

In a June 9, 2015 right knee magnetic resonance imaging (MRI) scan report, Dr. Michael A. Wilczynski, a radiologist, provided an impression of mild degenerative changes in the right knee joint.

By decision dated May 26, 2016, OWCP denied appellant’s occupational disease claim. It found that the factual element of the claim was not established. It noted that appellant had failed to respond to its April 4, 2016 development letter requesting additional information about her employment-related activities. OWCP also found that the medical evidence was insufficient to establish a diagnosed medical condition causally related to a work injury or event.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof 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.⁴ 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.⁵

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁶ To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or

³ On her Form CA-2, appellant related that her claim under File No. xxxxxx518 was not filed within 30 days of her injury because she was advised by a coordinator of a medical access group to wait until she heard from the U.S. Department of Labor concerning her first claim under File No. xxxxxx202. File No. xxxxxx202 is not before the Board on the present appeal.

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *S.P.*, *id.*

contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁷

ANALYSIS

The Board finds that appellant has failed to establish an injury in the performance of duty. Appellant's claim form generally stated that she sustained "other occupational illnesses" caused or aggravated by her employment. She did not present a clear factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of her disease or condition. Appellant has not explained how work duties caused or aggravated her claimed condition.

On April 4, 2016 OWCP informed appellant that the evidence received to date was insufficient to establish that she experienced any employment factors that were alleged to have caused an injury. Appellant was asked to provide a detailed description of the employment-related activities she believed contributed to her condition and how often she performed the described activities. OWCP afforded her 30 days to submit this additional evidence. Appellant did not provide any statement responding to OWCP's inquiry. The only medical evidence of record submitted was Dr. Wilczynski's June 9, 2015 MRI scan report, which does not describe appellant's work duties.

For reasons stated, the Board finds that appellant has not sufficiently identified employment activities alleged to have caused or contributed to her claimed conditions to meet her burden of proof.⁸

As appellant has not established the factual component of her claim, the Board will not address the medical evidence with respect to causal relationship.⁹

On appeal, appellant describes her symptoms, medical treatment, and work duties that she believed caused her claimed bilateral shoulder injury. However, she did not provide this information to OWCP prior to the issuance of its May 26, 2016 final decision and, thus, the Board is precluded from reviewing it.¹⁰

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.

⁷ *R.R.*, Docket No. 08-2010 (issued April 3, 2009); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

⁸ *R.Z.*, Docket No. 13-1911 (issued September 15, 2014).

⁹ *D.D.*, 57 ECAB 734 (2006).

¹⁰ *See supra* note 2.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the May 26, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 22, 2016
Washington, DC

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

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

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