

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

_____)
L.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Macomb, MI, Employer)
_____)

Docket No. 16-0950
Issued: October 17, 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
COLLEEN DUFFY KIKO, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 2, 2016 appellant filed a timely appeal from a November 9, 2015 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 claim.²

ISSUE

The issue is whether appellant met her burden of proof to establish a left elbow injury causally related to the accepted September 29, 2015 employment incident.

_____)
¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP issued its November 9, 2015 decision. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 30, 2015 appellant, then a 51-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging injury to her left elbow. She stated that on September 29, 2015 she was closing the window on her postal vehicle and her left elbow slammed into the door edge.

A September 30, 2015 medical and work status report from the employing establishment's occupational health services, a provider with an illegible signature, provided an impression of contusion left elbow and indicated that appellant could return to regular unrestricted duty on October 11, 2015.

In an October 7, 2015 letter, OWCP advised appellant of the deficiencies in her claim and provided her the opportunity to submit additional factual and medical evidence. Appellant was advised that she should submit a detailed narrative medical report from her treating physician which contained a history of the injury and a medical explanation with objective evidence of how the reported work incident caused or aggravated the claimed condition. She was afforded 30 days to submit such evidence.

In response, OWCP received October 1, 2015 notes from Dr. Monika Ochani, a Board-certified family practitioner, and diagnostic test notes. Dr. Ochani reported that the incident had occurred at work 12 to 24 hours prior to the examination and that the injury mechanism was a direct blow. She noted that appellant's left elbow pain had been intermittent since the incident, and associated symptoms included muscle weakness. Dr. Ochani provided examination findings and diagnosed contusion of left elbow. Copies of the September 30, 2015 x-ray report and notes were also provided.

By decision dated November 9, 2015, OWCP denied the claim as the medical evidence failed to establish that the diagnosed left elbow condition was causally related to the accepted September 29, 2015 work incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his 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.³ 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.⁴

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

established. Generally, fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident that is alleged to have occurred.⁵ 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.⁶

The medical evidence required to establish causal relationship is generally rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, 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 claimant.⁷ Neither the fact that a disease or condition manifests itself during a period of employment nor the belief that the disease or condition was caused or aggravated by employment factors or incidents is sufficient to establish causal relationship.⁸

ANALYSIS

Appellant filed a traumatic injury claim alleging injury to her left elbow when she was closing the window to her postal vehicle and she hit her left elbow on the edge of the door. OWCP accepted the September 29, 2015 incident as alleged, but found the medical evidence of record insufficient to establish a left elbow condition causally related to the accepted incident. The Board finds that appellant has not met her burden of proof to establish an injury causally related to the September 29, 2015 employment incident.

In her October 1, 2015 report, while Dr. Ochani provided an impression of left elbow contusion, she failed to provide details of how the injury occurred other than mentioning that it was from a direct blow. As her opinion did not provide medical rationale to explain causal relationship it is of limited probative value.⁹

Copies of the September 30, 2015 x-ray report and notes were also provided. However, they failed to offer any opinion as to how the reported work incident caused or aggravated a medical condition. The Board has held that medical evidence which does not offer any opinion

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Solomon Polen*, 51 ECAB 341 (2000).

⁸ *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

⁹ *See Lee R. Haywood*, 48 ECAB 145 (1996).

regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁰ Thus, these reports are insufficient to establish appellant's claim.

On appeal, appellant provided an explanation as to why she was closing up the window to her postal vehicle and asserted that she sought medical attention to assure she had no fractures. She stated that she continued to be billed for medical services incurred as a result of this work-related accident and submitted additional evidence.¹¹ As discussed above, OWCP properly found appellant has not established causal relationship between the September 29, 2015 work incident and her diagnosed condition. Moreover, there is no evidence of a properly completed Form CA-16 to develop a contractual relationship between appellant and the employing establishment to either pay or reimburse her for medical expenses. As such, OWCP is not responsible for payment of the medical bills.

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.¹² An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.

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 a left elbow injury causally related to the accepted September 29, 2015 employment incident.

¹⁰ *C.B.*, Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

¹¹ Since the Board's jurisdiction is limited to the evidence that was before OWCP at the time of its final decision, the Board may not consider this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

¹² *Daniel O. Vasquez*, 57 ECAB 559 (2006).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 9, 2015 is affirmed.

Issued: October 17, 2016
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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