



## **FACTUAL HISTORY**

On September 10, 2014 appellant, a 52-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that she was injured on September 5, 2014 when she received an electric shock while plugging in a hot cart.

In a work restriction note, containing an illegible signature, dated September 8, 2014, received by OWCP on September 15, 2015, it was indicated that appellant could return to work on light duty with restrictions of no lifting more than five pounds, no prolonged walking or standing, and minimal stairclimbing.

By report dated September 11, 2014, Dr. Gina C. Del Savio, Board-certified in orthopedic surgery, advised that appellant had been injured on September 5, 2014 when she was shocked while plugging in a hot cart in the kitchen. Appellant felt immediate pain in her left forearm radiating into her left elbow and left hip. She reported the injury to her supervisor and finished out the rest of her day. On September 8, 2014 appellant was treated at Occupational Health where she was examined and given ibuprofen for pain. Dr. Del Savio advised that appellant had constant severe, dull, aching, throbbing pain; and that the pain was worsening. She noted that appellant underwent x-ray tests of the left elbow which showed no fracture or dislocation, no arthritis, and no soft tissue calcification and of the left hip which were negative for fracture, dislocation, and arthritis. Dr. Del Savio opined that her current symptoms were causally related to the September 5, 2014 injury at work, that her complaints were consistent with the history of injury, and that the history of injury was consistent with his objective findings. She found that appellant had a 100 percent temporary disability.

In a September 11, 2014 report, Teresa Orton, a nurse practitioner, advised that appellant was being treated for left elbow, left leg, and left hip pain which was causally related to a work accident/injury. She recommended that appellant be kept off work for one week.

Appellant submitted work restriction notes dated September 12 and October 6, 2014. As with the September 8, 2015 restriction note, these reports did not contain a legible signature and did not indicate whether appellant had sustained a left elbow or left hip injury.

By letter dated September 16, 2014, OWCP advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. It asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms, the medical reasons for her condition, and an opinion as to whether her claimed condition was causally related to her federal employment. Appellant was afforded 30 days to submit the additional evidence.

In a report dated September 17, 2014, Dr. Eric Martin, Board-certified in orthopedic surgery, advised that appellant was injured on September 5, 2014 while plugging in a hot cart in the kitchen. He reported that she felt pain in her left forearm radiating into her elbow and left hip. Dr. Martin advised that the burning sensation she was feeling had improved, although she experienced low back spasms while doing laundry at home, which had been recurrent over the past few days. On examination he recorded normal findings. Dr. Martin noted that appellant's current symptoms were causally related to the work injury and that her complaints were

consistent with the history of the injury. He further asserted that the history of the injury was consistent with his objective findings. Dr. Martin noted that appellant was currently not working. He scheduled her for a follow-up appointment in two weeks.

Ms. Orton submitted follow-up reports dated September 17 and 26, and October 1, 2014 in which she indicated findings on examination and summarized the nature and extent of appellant's left elbow and left hip conditions.

Appellant submitted a September 18, 2014 hospital note from Dr. Alan M. Madell, a specialist in general surgery, which indicated that she was being treated for musculoskeletal pain.

In an October 1, 2014 report, Dr. Martin essentially reiterated his previous findings and conclusions.

By decision dated December 1, 2014, OWCP denied the claim, finding that appellant failed to provide medical evidence sufficient to establish that her conditions were causally related to the accepted September 5, 2014 work incident.

On January 20, 2015 appellant requested reconsideration.

In report dated December 5, 2014, Dr. Barry S. Hyman, Board-certified in orthopedic surgery, noted that appellant experienced pain in her left elbow and left forearm. He advised that her symptoms improved, then worsened. Dr. Hyman described the pain as achy, dull, sharp, and of moderate severity. He rated the pain as a 7 on a scale of 1 to 10.

In a January 16, 2015 report, Dr. David A. Jaeger, Board-certified in neurology, advised that appellant had a strain/spasm in her left ribs and left arm and was experiencing occasional numbness, aching, and pain down her left arm. He further advised that her hand occasionally froze up or gave out. Appellant underwent a magnetic resonance imaging (MRI) scan of her cervical and thoracic spine on April 10, 2014. The cervical MRI scan showed no recurrent disc herniation or spinal stenosis, diffuse disc bulge and central/right paracentral disc protrusion at C5-C6, a large disc osteophyte in the left neural foramen causing mild central canal stenosis and moderate left neural foraminal narrowing, diffuse disc bulge and uncovertebral arthropathy at C4-5 causing mild central canal stenosis and mild left neural foraminal narrowing, and mild right and moderate left neural foraminal narrowing at C3-4 due to uncovertebral hypertrophy. The thoracic MRI scan showed diffuse disc bulge at T11-12 causing mild left neural foraminal narrowing, left paracentral disc protrusion at T8-9 without spinal stenosis, and mild diffuse disc bulge at T6-7 without spinal stenosis.

In a January 21, 2015 report, Dr. Martin advised that appellant had been having recurrent spasms in her left forearm and severe headaches. He advised that her symptoms were unchanged. Appellant was experiencing pain in the left hip which radiated into her foot. Dr. Martin diagnosed cervical and lumbar strain and reiterated that her current symptoms were causally related to the September 5, 2014 employment injury. He opined that appellant's complaints were consistent with the history of injury and that the history of injury was consistent with his objective findings. Dr. Martin found that she had 50 percent temporary impairment.

In a February 13, 2015 report, Dr. Jaeger reiterated his previous findings and conclusions and advised that appellant had recently been experiencing headaches.

In a decision dated March 26, 2015, OWCP denied modification of the December 1, 2014 decision. It found that none of the medical reports of record provide a firm diagnosis in relation to the September 5, 2014 work incident. OWCP noted that, while the medical reports contained several medical diagnoses, including cervical and lumbar strain, there was no rationalized medical explanation as to how the September 5, 2014 work incident caused or aggravated any of these conditions.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish that 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 was sustained 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>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>5</sup>

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. 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.<sup>6</sup> 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.<sup>7</sup>

The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is a causal relationship between the two.<sup>8</sup>

An award of compensation may not be based on surmise, conjecture, or speculation. Neither, the fact that appellant’s condition became apparent during a period of employment nor the belief that her condition was caused, precipitated, or aggravated by her employment is

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>5</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>6</sup> *John J. Carlone*, 41 ECAB 354 (1989).

<sup>7</sup> *Id.* For a definition of the term “injury,” see 20 C.F.R. §10.5(e)(e).

<sup>8</sup> *See Joe T. Williams*, 44 ECAB 518, 521 (1993).

sufficient to establish causal relationship.<sup>9</sup> Causal relationship must be established by rationalized medical opinion evidence and appellant failed to submit such evidence.

### ANALYSIS

It is uncontested that appellant experienced pain in her left forearm radiating into her left elbow and left hip when she received an electric shock on September 5, 2014. The question of whether an employment incident caused a personal injury can only be established by probative medical evidence.<sup>10</sup> Appellant has not submitted rationalized probative medical evidence to establish that the September 5, 2014 employment incident caused a personal injury or that the accepted work incident would have been competent to cause the claimed injury.

Appellant submitted several reports from Drs. Del Savio, Martin, Hyman, and Jaeger. In her September 11, 2014 report, Dr. Del Savio opined that appellant felt immediate pain in her left forearm radiating into her left elbow and left hip after being electrocuted on September 5, 2014. The pain was severe, dull, aching, and throbbing pain the pain was worsening. Dr. Del Savio reported that appellant underwent x-rays of the left elbow which showed no fracture, dislocation, arthritis, or soft tissue calcification and of the left hip, which were similarly negative for fracture, dislocation, and arthritis. Dr. Martin made findings on examination and opined that the burning sensation she had been experiencing had improved. Drs. Del Savio and Martin opined that appellant's current symptoms were causally related to the work injury, that her complaints were consistent with the history of the injury, and that the history of injury was consistent with their objective findings. Dr. Martin's September 17 and October 1, 2014 and January 21, 2015 follow-up reports contained similar findings and conclusions. Dr. Hyman noted in his December 5, 2014 report that appellant was experiencing pain in her left elbow and left forearm which he described as achy, dull, sharp, and of moderate severity. He rated the pain scale as a 7 on a scale of 1 to 10. Dr. Jaeger advised in his January 16, 2015 report that appellant had a strain/spasm in her left ribs and left arm and was experiencing occasional numbness, aching and pain down her left arm. He reported that the results of April 10, 2014 cervical and thoracic MRI scans were substantially normal. Dr. Jaeger essentially reiterated his previous findings and conclusions in his February 13, 2015 report.

The weight of medical opinion is determined by the opportunity for and thoroughness of examination, the accuracy and completeness of physician's knowledge of the facts of the case, the medical history provided, the care of analysis manifested, and the medical rationale expressed in support of stated conclusions.<sup>11</sup> While Drs. Del Savio, Martin, Hyman, and Jaeger noted complaints of low back and left hip pain which they generally attributed to the September 5, 2014 work incident, the Board has consistently held that <pain > is a <symptom, rather than a compensable medical diagnosis.<sup>12</sup> The reports from these physicians did not provide a probative, rationalized opinion regarding whether the September 5, 2014 work incident

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<sup>9</sup> *Id.*

<sup>10</sup> *Carlone, supra* note 6.

<sup>11</sup> *See Anna C. Leanza*, 48 ECAB 115 (1996).

<sup>12</sup> *J.E.*, Docket No. 16-0370 (issued June 27, 2016).

caused a personal injury. They did not sufficiently explain how medically appellant would have sustained left elbow or left hip injuries because she received an electric shock on September 5, 2014. Drs. Del Savio, Martin, Hyman, and Jaeger did not adequately describe appellant's accepted incident or how it would have been competent to cause the claimed condition. As these physicians offered no medical explanation as to how the accepted incident would have physiologically caused the diagnosed condition, their opinions are of limited value in establishing causal relationship.<sup>13</sup>

While appellant submitted several reports from a nurse practitioner, Ms. Orton, these reports do not constitute medical evidence under section 8101(2). Because healthcare providers such as nurses, acupuncturists, physician assistants, and physical therapists are not considered "physicians" under FECA, their reports and opinions do not constitute competent medical evidence to establish a medical condition, disability, or causal relationship.<sup>14</sup>

Dr. Madell's September 18, 2014 hospital note advised that she was being treated for musculoskeletal pain, but did not provide a probative, rationalized medical opinion regarding whether appellant had sustained a left elbow or left hip injury causally related to the September 5, 2014 work incident. His opinion is therefore of limited probative value.<sup>15</sup>

The September 8 and 12, and October 6, 2014 work restriction notes did not contain a legible signature. The Board has held that unsigned reports or ones that bear illegible signatures cannot be considered as probative medical evidence because they lack proper identification.<sup>16</sup>

Appellant did not provide a report containing sufficient medical evidence demonstrating a causal connection between her September 5, 2014 work incident and her claimed left elbow or left hip injuries.

OWCP advised appellant of the evidence required to establish her claim; however, she failed to submit such evidence. Causal relationship must be established by rationalized medical opinion evidence. Appellant did not provide a medical opinion which describes or explains the medical process through which the September 5, 2014 work accident would have caused the claimed conditions. Accordingly, she failed to establish a left elbow or left hip injury in the performance of duty. OWCP properly denied appellant's claim for compensation.

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.

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<sup>13</sup> See *B.B.*, Docket No. 16-0304 (issued June 1, 2016).

<sup>14</sup> 5 U.S.C. § 8101(2); see also *G.G.*, 58 ECAB 389 (2007); *Jerré R. Rinehart*, 45 ECAB 518 (1994); *Barbara J. Williams*, 40 ECAB 649 (1989); *Jan A. White*, 34 ECAB 515 (1983).

<sup>15</sup> *Supra* note 13.

<sup>16</sup> *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004).

**CONCLUSION**

The Board finds that appellant has failed to meet her burden to establish a left elbow or left hip injury causally related to the accepted September 5, 2014 incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 7, 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