



## ISSUE

The issue is whether appellant met her burden of proof to establish a right shoulder injury in the performance of duty on February 8, 2015, as alleged.

On appeal counsel argues that the decision is contrary to law and fact.

## FACTUAL HISTORY

On February 9, 2015<sup>3</sup> appellant, then a 50-year-old postal clerk support employee, filed a traumatic injury claim (Form CA-1) alleging that on February 8, 2015 she injured her right shoulder when a heavy tub she was holding slipped and pulled her shoulder down. On the back of the claim form, M.I., supervisor, checked a box marked “yes” that appellant was in the performance of duty when injured. He further indicated that he received notice of injury on February 24, 2015, that she had filed a Form CA-1 form with a January 15, 2015 incident date, and then filed a second Form CA-1 with an incident date of February 8, 2015. M.I. also noted that appellant had attendance problems.

In an undated statement, B.M., appellant’s first line supervisor, reported that the first time appellant advised her “of any on[-the-]job injuries from January 15, 2015 through February 9, 2015” was on February 9, 2015. At that time, appellant claimed to have hurt her shoulder in January “and then changed it to February. B.M. indicated that appellant worked continuously during the period January 15 through February 9, 2015 with no complaints of being injured.

OWCP also received a statement from F.G., the employing establishment’s station manager, controverting appellant’s claim. F.G. noted that appellant was a temporary employee with attendance issues, which were being addressed by the employing establishment. According to F.G., appellant notified management on February 9, 2015 that she had injured herself at work. Initially, appellant indicated that January 15, 2015 was the date of injury and that she had previously apprised the employing establishment’s managers of this injury on her “first CA-1” form. However, F.G. noted that appellant had not previously apprised management of this alleged January 15, 2015 injury, but did include a January 2015 date of injury on the first CA-1 form.<sup>4</sup> She went on to say that at no point during the period January 15 to February 9, 2015 had appellant informed management of an injury or exhibit any difficulty while working until February 9, 2015 when she completed the second CA-1 form with a different supervisor. It was at that time when appellant included an injury date of February 8, 2015.

By letter dated March 2, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required. OWCP requested that she complete a questionnaire as to how the injury occurred. It afforded appellant’s 30 days to provide the requested information and copied the employing establishment.

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<sup>3</sup> Appellant noted February 9, 2015 as the date of notice, but signed the form on February 24, 2015.

<sup>4</sup> The Board notes that the referenced “first CA-1” form is not contained in the case record as transmitted to the Board.

On March 5, 2015 OWCP received a March 5, 2015 letter from D.M. of the employing establishment's Health Resource Management office, controverting appellant's claim. D.M. noted that his office received a CA-1 form with a date-of-injury listed as January 2015 with no date. He related that, after contacting appellant on several occasions regarding the date of injury, she ultimately completed a CA-1 form with February 8, 2015 listed as the date of injury. D.M. added that the medical evidence did not establish a causal relationship and concluded that her claim should be denied.

Subsequently, OWCP received reports dated February 9 and March 26, 2015 from Dr. Irwin A. Mandel, an examining Board-certified orthopedic surgeon, who diagnosed right shoulder strain/sprain, which he opined was work related. Dr. Mandel noted that appellant attributed her condition to a work-related lifting injury as her shoulder pain began two weeks ago when her arm was yanked when a heavy tub of mail she was carrying slipped. He noted that her pain and limited range of motion were aggravated by excessive lifting and use. Physical examination revealed right deltoid tenderness, no right acromioclavicular joint, subacromion, or bicep long head tenderness, and full range of motion. Dr. Mandel related his concern that appellant might have a right acute rotator cuff tear as a result of the injury.

Dr. Mandel, in a letter dated February 9, 2015, recommended a magnetic resonance imaging (MRI) scan be performed. He further advised that appellant was disabled from work until a revaluation or MRI scan was performed.

In a February 25, 2015 duty status (Form CA-17), Dr. Mandel diagnosed right shoulder strain and provided work restrictions. He noted an injury date of February 8, 2015 and described the injury as occurring when appellant was holding a heavy tub, which slipped and pulled her shoulder down.

By decision dated April 9, 2015, OWCP denied appellant's claim as it found that she had not established that the February 8, 2015 incident occurred as alleged. It noted that the employing establishment controverted the claim, that appellant had provided no information or witness statements as to how the injury occurred, and that the record contained conflicting evidence regarding the date of the injury.

In an April 25, 2015 statement, appellant alleged that she never received the March 2, 2015 development letter from OWCP. She related that on January 4, 2015 she had been directed by M.I. to empty full tubs of mail into the dumpster outside on a snowy/cold rainy day. While lifting and emptying heavy tubs weighing approximately 40 to 50 pounds, appellant felt her right arm being yanked down and immediately felt right shoulder pain. She claimed to have informed M.I. of this incident that day, that at the time "it did not seem to be anything serious," and that she took measures to alleviate the soreness when she went home. Appellant continued that when she returned to work on January 6, 2015 she reminded M.I. that her shoulder was sore, that he assigned her lighter tasks that day, and that she continued her regularly assigned duties in the "next few weeks" while continuing to experience shoulder pain on an intermittent basis. She related that the second incident occurred on February 8, 2015 around 2:00 p.m. while lifting a heavy tub of mail overhead when her right shoulder gave out and she felt a shooting pain. Appellant alleged that the next morning she was in intense pain, but went to work at 5:30 a.m. on

February 9, 2015 to inform her supervisor regarding the severity of the injury sustained the day before. She then followed her supervisor's instructions and went to the emergency room.

On May 4, 2015 OWCP received a February 9, 2015 emergency room visit report by Dr. Patrick H. Fairley, a Board-certified emergency room physician for complaints of right shoulder pain. Appellant related that she had experienced right shoulder pain for three to four weeks. She noted that she had lifted a large tub of mail to be dumped into a tub, which jerked her shoulder downward. A physical examination revealed right shoulder tenderness and pain with range of motion.

OWCP also received a February 9, 2015 right shoulder MRI scan, which found no evidence of acute fracture or dislocation. The MRI scan did find hypertrophic changes along the greater right humerus tuberosity and acromion underside.

On April 28, 2015 appellant requested a review of the written record by an OWCP hearing representative.

By decision dated October 8, 2015, an OWCP hearing representative affirmed the April 9, 2015 decision. She found that the inconsistencies in the record were sufficient to raise doubt as to whether the claimed incident occurred as alleged.

On November 12, 2015 counsel requested reconsideration and submitted additional evidence.

In an accompanying September 18, 2015 statement, appellant disputed the employing establishment's statements regarding her injury. She stated that her records established that her shift was from 5:30 a.m. to 3:00 p.m. on February 8, 2015 and that she was processing Amazon packages for delivery. According to appellant there were four other people besides herself, three carriers and M.I., present at the time. On the following Monday morning M.I. sent her to the emergency room "knowing, and agreeing that my injury was sustained just 14-16 hours prior on Sunday afternoon." Appellant observed that neither B.M. nor F.G. had been present when she injured herself on February 8, 2015, that she did not speak to them on February 9, 2015, and, thus, she did not understand why they were controverting her claim. She reported that an investigation by the employing establishment's Office of Inspector General (OIG) found no evidence that a fraudulent claim had been filed.

As exhibits, appellant attached the second page of a CA-1 form, which was signed by M.I. and noted February 9, 2015 as the date notice of injury was received. The date of injury was blank. Another exhibit was a case summary report of an investigation from the OIG conducted during the period March 6 to 23, 2015 based on an allegation of claimant fraud on the part of appellant. M.I. closed the investigation finding that the allegation of fraud in pursuit of her claim for compensation benefits was unfounded.

In a November 16, 2015 report, Dr. Brant Holtzmeier, a treating osteopath Board-certified in osteopathic manipulation medicine, opined that appellant sustained a right shoulder injury on February 8, 2015 due to unloading approximately 30 boxes of mail. He reported that each box of mail weighed approximately 20 pounds, which she had to lift overhead into overfilled bins. While attempting to lift a box that had been dislodged appellant felt a sudden

pain in her right shoulder, which then gave out. Dr. Holtzmeier diagnosed right rotator cuff tear based on physical examination findings and an MRI scan. He concluded that appellant's right rotator cuff tear had been caused by the February 8, 2015 employment incident.

By decision dated April 27, 2016, OWCP denied modification. It found that while appellant had reported and described a work incident on February 8, 2015 from lifting a tub of mail, this was not the mechanism of injury she provided on her CA-1 form. Furthermore, she had initially submitted a Form CA-1 for a January 15, 2015 injury date, but then had submitted a second CA-1 form with the date of injury as February 8, 2015. OWCP concluded that the inconsistencies regarding the circumstances of the alleged injury of February 8, 2015 were sufficient to create doubt as to whether the alleged incident occurred at the time, place, and in the manner alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of 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 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.<sup>8</sup> First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.<sup>9</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>10</sup>

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.<sup>11</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following

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<sup>5</sup> *Supra* note 2.

<sup>6</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>7</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>8</sup> *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 6.

<sup>9</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>10</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 6.

<sup>11</sup> *See Betty J. Smith*, 54 ECAB 174 (2002).

the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements.<sup>12</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>13</sup>

### ANALYSIS

Appellant filed a traumatic injury claim alleging that she sustained a right shoulder injury in the performance of duty on February 8, 2015. OWCP denied her claim as it found that she had not established that the incident occurred at the time, place, and in the manner alleged. The Board finds that appellant failed to establish a traumatic injury in the performance of duty on February 8, 2015. Appellant's presentation of the facts is not supported by the evidence of record and does not establish her allegation that a specific event occurred in the performance of duty which caused an injury on the date in question.<sup>14</sup>

In an April 25, 2015 statement, appellant stated that M.I. directed her to empty tubs of mail into a dumpster on January 4, 2015. While performing this duty of lifting heavy tubs weighing between 40 to 50 pounds she felt right shoulder pain when she felt her right arm yanked down. Appellant pointed out that, upon her return to work on January 6, 2015, M.I. assigned her light duty that day as she had reminded him of the injury, and that she continued to perform her regularly assigned duties over the following weeks with intermittent shoulder pain. She alleged that on February 8, 2015 her right shoulder gave out while lifting a heavy tub of mail overhead. Appellant stated that she was in intense pain the following morning, but went to work to inform her supervisor that her injury from the previous day was more severe than initially thought. After explaining this to her supervisor, he instructed her to go to the emergency room. In a subsequent statement, appellant noted that she was processing Amazon packages for delivery on February 8, 2015 when she was injured and there were four other people present. She noted that an investigation by the OIG determined that she had not filed a fraudulent claim. Appellant provided the case summary report of the investigation which was conducted by the special agent during the period March 6 to 23, 2015, about a month following the occurrence of the alleged injury of February 9, 2015.

The employing establishment controverted appellant's claim. Both F.G. and M.I., in controverting the claim, noted that appellant had filed a CA-1 form with an incident date of January 15, 2015 before filing a CA-1 form with February 8, 2015 as the date of the incident. B.M. and F.G. both reported that appellant alleged that she had sustained right shoulder injuries from January 15 to February 9, 2015, but continued to work with no complaints of an injury until February 9, 2015.

Additionally, D.M. of the employing establishment's Health and Resource Management office confirmed that appellant had initially filed a CA-1 form with his office and only included

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<sup>12</sup> *Linda S. Christian*, 46 ECAB 598 (1995).

<sup>13</sup> *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>14</sup> *Bonnie A. Contreras*, *supra* note 6; *Dennis M. Mascarenas*, 49 ECAB 215 (1997).

the month of January and the year 2015 as to the date of injury. After several attempts to secure the date of injury from her, he related that it was not until February 9, 2015 that she provided that date of injury as February 8, 2015 on a second CA-1 form.

The evidence of record also contains inconsistencies that cast serious doubt as to the date of the alleged work incident. The early medical evidence submitted by appellant noted that the injury occurred two to four weeks prior to the February 8, 2015 incident. Dr. Mandel, in February 9 and 26, 2015 reports noted that she attributed her right shoulder condition to her arm being yanked when a heavy tub of mail she was carrying slipped two weeks prior. On a February 25, 2015 CA-17 form, he noted an injury date of February 8, 2015 and described the injury as occurring when a heavy tub of mail appellant was holding slipped and pulled her shoulder down. Similarly, Dr. Lee C. Zeiszler M.D., and Dr. Fairley, in a February 9, 2015 emergency report, noted that she was seen for right shoulder pain. They noted that appellant's right shoulder pain had been present for the past three to four weeks and she related that her shoulder had been jerked downward while lifting a large tub of mail to be dumped into a tub. Dr. Holtzmeier, in a November 16, 2015 report, described the injury as occurring from her unloading about 30 boxes of mail weighing about 20 pounds each on February 8, 2015. The record does not support that Drs. Mandel, Holtzmeier, Zeiszler, and Dr. Fairley had consistent accurate histories of the February 8, 2015 incident as they related differing accounts of how the incident occurred and when it occurred.<sup>15</sup>

There also are no contemporaneous statements from witnesses supporting that the February 8, 2015 incident occurred as alleged. While an injury does not have to be confirmed by eyewitnesses to establish that an employee sustained an injury in the performance of duty, the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action. Appellant claimed that there were four other people present at the time of the alleged February 8, 2015 employment incident, which included M.I., but she did not submit any statements from these witnesses. Moreover, as noted above, although M.I. checked a box marked "yes" indicating that appellant was in the performance of duty, he noted on the CA-1 form for the alleged February 8, 2015 employment injury that she had filed two CA-1 forms containing two different dates of injury, *i.e.*, January 15 and February 8, 2015.

As the foregoing inconsistencies cast serious doubt concerning whether appellant was injured at work on February 8, 2015 in the performance of duty, the Board finds that she has not met her burden of proof to establish an injury in the performance of duty. Since appellant failed to establish the first component of fact of injury, it is not necessary to discuss whether she submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the alleged employment incident of February 8, 2015.<sup>16</sup>

On appeal, counsel contends that OWCP's decision was contrary to fact and law. Based on the findings and reasons stated above, the Board finds that the counsel's arguments are not substantiated.

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<sup>15</sup> See *Geraldine H. Johnson*, 44 ECAB 745 (1993).

<sup>16</sup> See *Dennis M. Mascarenas*, *supra* note 14.

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 has not met her burden of proof to establish a right shoulder injury in the performance of duty on February 8, 2015, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated April 27, 2016 is affirmed.

Issued: June 21, 2017  
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