



## **FACTUAL HISTORY**

On September 6, 2016 appellant, then a 47-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her left elbow, torso, right side of her back, and right buttock when she slipped and fell on a wet floor at work while in the performance of her duties. She stopped work on the date of injury and has not returned.

Appellant submitted September 6, 2016 discharge instructions from New York Presbyterian Hospital which contained the printed name of Marilou Salvatierra, a nurse. The discharge instructions indicated that x-rays of the chest and pelvis had been performed and were negative and advised that medication had been prescribed.

In a September 26, 2016 letter, OWCP advised appellant that her claim initially appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It noted that it had reopened the claim for consideration because she had not returned to work. OWCP informed appellant of the type of evidence needed to support her claim and requested that she submit such evidence within 30 days.

In response, OWCP received a September 20, 2016 medical report from Dr. Jamil M. Abraham, a family physician Board-certified in pediatrics. Dr. Abraham noted a history that on September 6, 2016 appellant was boxing up mail when she slipped on a puddle of water and fell on her back. He described her medical treatment, current complaints of pain in her low back and left elbow, and social background. Dr. Abraham discussed findings on physical examination of the lumbar spine and left elbow. He diagnosed low back derangement, lumbar radiculopathy, and traumatic arthropathy of the elbow joint. In a certificate of illness dated September 21, 2016, Dr. Abraham noted that appellant had been ill from September 7, 2016 to the present. He indicated that she had backache and traumatic arthropathy of the left elbow. Dr. Abraham advised that appellant could return to work on September 28, 2016 with no restrictions.

By decision dated November 2, 2016, OWCP accepted that the September 6, 2016 work incident occurred as alleged. However, it denied appellant's claim and determined that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted employment incident.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence<sup>3</sup> including that he or she sustained an injury in the performance of duty and that any specific condition or disability for work for which he or she claims compensation is causally related to that employment injury.<sup>4</sup>

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<sup>3</sup> *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

<sup>4</sup> *G.T.*, 59 ECAB 447 (2008); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established.<sup>5</sup> There are two components involved in establishing the fact of injury. 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>6</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.<sup>7</sup> The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon complete factual and medical background, showing a causal relationship between the claimed condition and the identified factors.<sup>8</sup> The belief of the claimant that a condition was caused or aggravated by the employment is insufficient to establish a causal relationship.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that she sustained a traumatic injury caused by the September 6, 2016 employment incident. Appellant failed to submit sufficient medical evidence to establish that her left elbow and back injuries were causally related to the accepted employment incident.

Dr. Abraham's September 20, 2016 report noted a history of the September 6, 2016 employment incident and diagnosed low back derangement, lumbar radiculopathy, and traumatic arthropathy of the elbow joint. However, he did not offer an opinion of whether appellant's conditions were caused or aggravated by the accepted work incident.<sup>10</sup> In a September 21, 2016 certificate of illness, Dr. Abraham indicated that appellant was ill from September 7, 2016 through the present due to backache and traumatic arthropathy of the left elbow. He released her to return to work on September 28, 2016 with no restrictions. However, Dr. Abraham again failed to offer a medical opinion on whether appellant's conditions and prior disability from work were caused or aggravated by the accepted employment incident.<sup>11</sup> Thus, the Board finds that his reports are insufficient to meet appellant's burden of proof.

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<sup>5</sup> *S.P.*, 59 ECAB 184 (2007); *Alvin V. Gadd*, 57 ECAB 172 (2005).

<sup>6</sup> *Bonnie A. Contreras*, 57 ECAB 364 (2006); *Edward C. Lawrence*, 19 ECAB 442 (1968).

<sup>7</sup> *John J. Carlone*, 41 ECAB 354 (1989); *see supra* note 2 at § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>8</sup> *Lourdes Harris*, 45 ECAB 545 (1994); *see Walter D. Morehead*, 31 ECAB 188 (1979).

<sup>9</sup> *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

<sup>10</sup> *A.D.*, 58 ECAB 159 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>11</sup> *Id.*

The September 6, 2016 hospital discharge instructions completed by Nurse Salvatierra are insufficient to establish appellant's claim. This evidence has no probative medical value as nurses are not considered physicians as defined under FECA.<sup>12</sup>

The Board finds that appellant has failed to submit any rationalized probative medical evidence to establish that her diagnosed left elbow and back injuries were causally related to the accepted September 6, 2016 employment incident. Appellant, therefore, did not meet her burden of proof.

On appeal, appellant contends that she sustained a work-related injury. For the reasons set forth above, the Board finds that the medical evidence is insufficient to establish that she sustained left elbow and back conditions causally related to the accepted September 6, 2016 work incident.

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 failed to meet her burden of proof to establish left elbow and back injuries causally related to a September 6, 2016 employment incident.

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<sup>12</sup> 5 U.S.C. § 8101(2); *see M.B.*, Docket No. 16-1188 (issued January 10, 2017) (nurses are not considered physicians as defined by FECA).

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 2, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 8, 2017  
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