

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

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B.A., Appellant )  
 )  
and )  
 )  
DEPARTMENT OF TRANSPORTATION, )  
TRANSPORTATION SECURITY )  
ADMINISTRATION, Washington, DC, Employer )  
\_\_\_\_\_ )

**Docket No. 17-1130  
Issued: November 24, 2017**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge  
COLLEEN DUFFY KIKO, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On May 1, 2017 appellant filed a timely appeal from a December 13, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant met her burden of proof to establish a traumatic injury causally related to an accepted December 27, 2013 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that appellant has submitted new evidence with her appeal to the Board. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. Thus, the Board is precluded from reviewing this evidence for the first time on appeal. See 20 C.F.R. §§ 501.2(c)(1); *M.B.*, Docket No. 09-0176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

## **FACTUAL HISTORY**

On December 27, 2013 appellant, then a 25-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she felt a sharp pain in her left shoulder and wrist after picking up a car seat at work. She did not indicate on the claim form that she had stopped work.

In a December 27, 2013 report, Cassy Menezes, a physical therapist, noted appellant's history of injury. She provided physical examination findings and diagnosed upper arm and shoulder pain.

In reports dated December 27, 2013 and January 13, 2014, Brandon Soule, a certified physician assistant, indicated that appellant was seen for a shoulder injury which occurred at work on December 27, 2013. He noted appellant's history that the injury occurred when she lifted a car seat. Mr. Soule provided examination findings and diagnosed shoulder strain and wrist pain.

In reports dated January 2, 3, 6, and 9, 2014, David Wilsey, a physical therapist, diagnosed upper arm and shoulder strain. He noted the examination findings and the treatment provided.

On March 23, 2013 OWCP received a December 27, 2013 Physician Work Activity Status report and a January 13, 2014 progress note from Mr. Soule.

Mr. Soule, in both forms, diagnosed upper arm and shoulder sprain and pain involving shoulder region joint. In the December 27, 2013 form, he released appellant to return to work with restrictions of no lifting, pulling, or pushing more than 25 pounds and limited shoulder use. Mr. Soule, in the January 13, 2014 form, released her from his care and noted that she was to return to regular duty that day.

In the January 13, 2014 progress note, Mr. Soule noted an injury date of December 27, 2013 and diagnosed left shoulder strain. Examination findings included full neck range of motion negative left shoulder impingement, no pain on palpation of the left shoulder, and good left shoulder strength, circulation, and motor function.

OWCP also received a January 13, 2014 physical therapy note from Mr. Wilsey.

On April 1, 2014 appellant filed a notice of recurrence (Form CA-2a). She described the recurrence as occurring on April 17, 2014 when she sustained left wrist pain due to lifting a piece of heavy luggage.

In an April 30, 2015 office visit, Dr. John F. Byrne, an examining physician specializing in orthopedic surgery, diagnosed wrist contusion and referred appellant for an arthrogram.

A May 15, 2015 left wrist arthrogram was performed by Dr. Verne F. Kemerer, Jr., a Board-certified diagnostic radiologist. He noted that appellant had experienced left wrist popping and lateral pain for the past year and a half. Dr. Kemerer noted that the study demonstrated normal joint capacity.

A May 15, 2015 magnetic resonance imaging (MRI) scan of the left wrist was also normal for appellant's age.

In reports dated June 16, 20, and 23, 2016, Dr. Sam Marco, a treating Board-certified family medicine practitioner, noted that appellant was seen for an animal bite sustained on June 16, 2016. Appellant stated that a service animal bit her right forearm while the traveler was being screened. Examination finding and history were noted. Dr. Marco diagnosed forearm dog bite and released appellant to return to work with no restrictions.

In a letter dated October 24, 2016, OWCP informed appellant that the December 27, 2013 injury claim appeared to be a minor injury at the time she filed her claim, that it had approved a limited amount of medical expenses, and that the merits of the claim had not been adjudicated. It was reopening the claim for a review of the merits based on the filing of notice of recurrence. OWCP informed appellant that the evidence she had submitted was not sufficient to establish her claim and advised her as to the medical and factual evidence required. Appellant was afforded 30 days to provide the requested information.

In response to OWCP's letter, appellant submitted a statement dated October 23, 2016. She related that she continued to have left shoulder and wrist pain from the alleged December 27, 2013 work incident. Appellant noted that it was unfair that OWCP has not paid the medical bills incurred for her left shoulder treatment.

In a November 7, 2016 physical therapy report, Marcelle N. Ortiz, a certified registered occupational therapist, provided examination findings and treatment. The report noted that appellant was referred for physical therapy by Elizabeth Rothbard, a physician assistant. Diagnoses included chronic left wrist radial pain and left wrist contusion.

In a report dated November 8, 2016, Dr. Byrne noted that appellant was first seen on April 17, 2015 for her left wrist pain complaints, which she attributed to a December 27, 2013 work injury. Appellant related that her left wrist condition had progressively worsened and also had become more severe. Dr. Byrne referred her for an MRI scan and diagnosed wrist contusion. He reported that appellant's left wrist condition was aggravated at work on October 21, 2016 when her wrist was grabbed and squeezed by an individual going through the scanner. Examination findings revealed no cysts, masses, or obvious swelling, limited wrist flexion and extension, wrist tenderness over the mid dorsum area, and no instability. Dr. Byrne referred appellant for physical therapy as her wrist was quite stiff. He released her to return to light-duty work on November 7, 2016 with restrictions of no lifting using her left hand.

In a November 14, 2016 letter, appellant stated that she had recurring left wrist pain from the December 27, 2013 work incident. The injury occurred when she felt immediate pain and popping in her left shoulder after picking up a car seat weighing 20 pounds.

On November 9, 2016 appellant again filed a claim for recurrence of disability (Form CA-2a) on October 21, 2016 due to the alleged December 27, 2013 incident. She alleged that she had experienced left wrist pain since her injury. Appellant related that the recurrence of pain occurred when a passenger grabbed her left wrist, which aggravated the left wrist condition.

On November 23, 2016 OWCP received an October 21, 2016 note from Ms. Ortiz requesting that appellant be excused from work due to injury on October 21, 2016 and releasing her to light-duty work on October 22, 2016. Ms. Ortiz diagnosed a wrist sprain. OWCP also received an October 21, 2016 visit summary sheet noting an injury date of October 21, 2016 and diagnosing a left wrist sprain.

By decision dated December 13, 2016, OWCP denied appellant's claim. It found that she had established that the December 27, 2013 incident had occurred as alleged and that a medical condition had been diagnosed, but that appellant had not established an injury causally related to the accepted employment incident.<sup>3</sup>

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> 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.<sup>5</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>6</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>7</sup> 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>8</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>9</sup>

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is causal relationship between the employee's diagnosed condition and the

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<sup>3</sup> OWCP advised appellant that she could file Forms CA-1 for the alleged April 7 and October 21, 2016 incidents.

<sup>4</sup> *Supra* note 1.

<sup>5</sup> *C.S.*, Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>6</sup> *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

<sup>8</sup> *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

<sup>9</sup> *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

<sup>10</sup> *Y.J.*, Docket No. 08-1167 (issued October 7, 2008); *A.D.*, 58 ECAB 149 (2006); *D'Wayne Avila*, 57 ECAB 642 (2006).

compensable employment factors.<sup>11</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employee.<sup>12</sup>

### ANALYSIS

Appellant alleged that she sustained left shoulder and wrist injuries as a result of a December 27, 2013 work incident. OWCP accepted that the December 27, 2013 employment incident occurred as alleged, but denied her claim because the medical evidence of record was insufficient to establish an injury causally related to the accepted incident.

The Board finds that appellant has not established a traumatic injury causally related to the accepted December 27, 2013 employment incident.

Dr. Byrne, in his April 30, 2015 report, diagnosed left wrist contusion. In a November 8, 2016 report, he noted the December 27, 2013 work incident and that appellant attributed her left wrist complaints to that incident. Dr. Byrne provided examination findings and opined that her current left wrist condition had been aggravated by an October 21, 2016 work injury. The submission of this report does not establish appellant's claim for a work-related December 27, 2013 injury because he failed to provide a rationalized medical opinion explaining how the diagnosed 2016 condition was causally related to the accepted 2013 employment incident. Dr. Byrne did not describe the December 27, 2013 employment incident in any detail or detail how physiologically it could have caused appellant's left wrist condition.<sup>13</sup> Thus, this report is insufficient to establish her claim.

The record also contains an MRI scan report and a left wrist arthrogram dated May 15, 2015 noting normal left wrist findings. These diagnostic reports are of limited probative value and insufficient to establish the claim as this evidence does not specifically address whether appellant's diagnosed conditions were causally related to the accepted December 27, 2013 work incident.<sup>14</sup>

Appellant also submitted physical therapy notes, as well as form reports and progress notes by a physician assistant. While these reports note a diagnosis of left shoulder strain, these documents do not constitute competent medical evidence because physical therapists and

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<sup>11</sup> *J.J.*, Docket No. 09-0027 (issued February 10, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>12</sup> *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>13</sup> *M.A.*, Docket No. 17-0352 (issued June 16, 2017).

<sup>14</sup> *D.P.*, Docket No. 17-0148 (issued May 18, 2017); *see also Linda I. Sprague*, 48 ECAB 386 (1997) (medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship). *See also A.B.*, Docket No. 17-0301 (issued May 19, 2017) (diagnostic tests are of limited probative value as they failed to provide an opinion on causal relationship).

physician assistants are not physicians as defined under FECA.<sup>15</sup> As such, this evidence is also insufficient to meet appellant's burden of proof.

Dr. Marco diagnosed an animal bite due to a June 16, 2016 incident. His report is insufficient to establish appellant's claim as he does not address either the accepted December 27, 2013 work incident or any conditions caused by the accepted incident.<sup>16</sup>

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.<sup>17</sup> An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>18</sup>

The record before the Board is without rationalized medical evidence establishing that appellant sustained a left shoulder and wrist conditions causally related to the accepted December 27, 2013 work incident. OWCP advised her that it was her responsibility to provide a comprehensive medical report which described her symptoms, test results, diagnosis, and the physician's opinion, supported by medical rationale, explaining the causal relationship between her diagnosis and the accepted employment incident. Appellant failed to submit appropriate medical evidence in response to OWCP's request and therefore did not meet her burden of proof.<sup>19</sup>

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 traumatic injury causally related to the accepted December 27, 2013 employment incident.

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<sup>15</sup> See *E.K.*, Docket No. 09-1827 (issued April 21, 2010); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a physician as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law).

<sup>16</sup> See *S.S.*, Docket No. 14-0023 (issued April 16, 2014).

<sup>17</sup> *L.D.*, Docket No. 09-1503 (issued April 15, 2010); *D.I.*, 59 ECAB 158 (2007); *Daniel O. Vasquez*, 57 ECAB 559 (2006).

<sup>18</sup> *S.S.*, 59 ECAB 315 (2008); *J.M.*, 58 ECAB 303 (2007); *Donald W. Long*, 41 ECAB 142 (1989).

<sup>19</sup> *R.B.*, Docket No. 16-1732 (issued March 16, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated December 13, 2016 is affirmed.

Issued: November 24, 2017  
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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