

FACTUAL HISTORY

On March 23, 2016 appellant, then a 52-year-old rural mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2016 her postmaster pushed/shoved her twice in her right shoulder and aggravated an old injury. She stopped work on March 24, 2016. The employing establishment controverted appellant's traumatic injury claim asserting that the incident did not occur as described and appellant's claimed condition was self-generated.

In a March 18, 2016 statement, the postmaster indicated that, at approximately 8:40 a.m. that morning, he heard appellant speaking to a coworker in a loud voice complaining and using the word "backstabber." He intervened and learned that the exchange had to do with the amount of time credited for performing certain duties (retrieving a pipe truck). The postmaster noted that appellant was not speaking in a "normal" tone or volume, and he explained to her again that she would receive credit for the time spent on the particular task. However, appellant reportedly would not listen to anything the postmaster told her and she continued to be loud and disruptive, causing a scene on the workroom floor. The postmaster asked appellant to lower her voice. Another coworker came by and he too explained the accounting process for time spent retrieving a pipe truck. The postmaster indicated that appellant continued to "escalate her loud and confrontational tone." He told her several times to lower her voice, but appellant continued to be loud and disruptive. The postmaster warned appellant that, if she continued to be disruptive, she would have to sign out and leave. Appellant reportedly commented that she was not going home. The postmaster then told her that they needed to take the matter off the workroom floor, and indicated that they should continue their discussion on the dock which was located approximately 30 feet away. Appellant continued to argue and she became louder and even more disruptive. The postmaster again told appellant to follow him off the workroom floor and advised her that she would be sent home if she continued such unacceptable behavior. Appellant eventually followed the postmaster to the dock area, along with the coworker who was part of the initial confrontation. Once the three of them reached the inside area of the dock, the postmaster indicated that he addressed appellant by her name and put his hand on her shoulder, hoping to calm her down and to diffuse the situation. In response, appellant allegedly shouted "don't you touch me, I'm calling 911." She also shouted that she was threatened and that the postmaster had pushed her, and repeated that she was calling the police. The postmaster told appellant she needed to leave the building immediately, which he repeated several times. Appellant returned to the workroom floor and made her way back to her case, all the while yelling about how she felt threatened by the postmaster and that he had pushed her. When she arrived at her case, appellant dialed 911 and proceeded to describe the incident in a loud voice for the entire workroom to hear. The postmaster reported that he remained by appellant's case the entire time telling her to please leave. He noted that she finally left after placing her 911 call. The postmaster indicated that several witnesses provided written statements and the police arrived on premises to investigate the incident.

In a March 18, 2016 statement, a coworker, G.Z., indicated that on March 18, 2016 she observed the postmaster telling appellant to lower her voice but that she did not do so. The coworker noted that the postmaster tried to get appellant to go to the dock area to discuss the matter in private and indicated that the postmaster put his hand on appellant's shoulders to escort her to the dock area. She reported that appellant started yelling, "Get your hands off me," but

indicated that the postmaster did not push or shove appellant. Appellant then called the police and she was sent home at a later time.

Coworker, D.S., also provided a March 18, 2016 statement in which he indicated that he observed appellant being loud and disruptive since beginning work at 8:00 a.m. on March 18, 2016. On that date, appellant constantly voiced her displeasure about how management officials handled the rural route count and accused them of falsifying the paperwork for the count. The coworker indicated that she went out to load her vehicle and, that on her way back in, she observed the postmaster escorting appellant from the building. The postmaster reportedly opened one of the swinging doors for appellant and guided her out of the building without touching her.

In a third statement dated March 18, 2016, another coworker, P.T., indicated that on the morning of March 18, 2016 he saw the postmaster having a conversation with appellant regarding her credit for time spent on her route. He noted that appellant became belligerent and called the postmaster a “backstabber,” and that the postmaster told her several times that he would send her home. The postmaster reportedly asked appellant to go out on the dock, but she refused and stated that she was not leaving. Appellant later walked to the dock while talking in a very loud voice and the postmaster told her to settle down and advised that they would talk on the dock. The coworker noted that appellant came back into the employing establishment building and stated that she would call the police because the postmaster had grabbed her shoulder.

In an April 13, 2016 letter, OWCP requested that appellant submit additional factual and medical evidence in support of her claim. It asked her to complete a questionnaire which posed questions regarding the claimed events on March 18, 2016. On April 13, 2016 OWCP also requested additional information from the employing establishment.

In a March 18, 2016 report for the Zion Police Department, the investigating police officer indicated that he was dispatched to the employing establishment premises at 9:02 a.m. on March 18, 2016 regarding a work disturbance.³ The officer reported that he met with the complainant outside the premises at which time she stated that people were getting loud during that morning’s inventory sessions and that the postmaster pushed her out the door. Appellant then proceeded to demonstrate how the postmaster allegedly pushed her by pushing the officer in the left shoulder and the officer reported that he advised appellant that she had just committed a battery against him and that she would be arrested if she did it again. The officer then interviewed the postmaster who advised that appellant was loud and belligerent while route inventory was being conducted on that date and that she caused a disruption amongst the other employees. The postmaster stated that he asked appellant to step outside in an attempt to calm her down and that he had to ask her again due to her failure to comply. The officer noted that the postmaster advised that he then “made an executive decision” and guided appellant out of the building by hovering one hand over her upper back while guiding her forward with the other hand. The officer interviewed a coworker, G.Z., who indicated that the postmaster escorted appellant out of the building but did not push or shove her or do anything “that appeared to be

³ The officer listed the “Nature of Incident” at the top of the report as “Disorderly Conduct.” Both appellant and employing establishment submitted a copy of this report.

inappropriate.” G.Z. advised that she did not observe the postmaster touch appellant at any point. The officer interviewed another coworker, D.S., who spoke about appellant’s disruptive behavior and noted that the postmaster escorted appellant out of the building. He did not observe the postmaster have any physical contact with appellant during their encounter. The officer noted that he then advised appellant that there was not enough evidence to show that a crime was committed. Appellant then became upset and closed her driver’s side door window, an action which he interpreted as a clear indication she no longer wanted to speak with him.

Appellant submitted a response, signed on April 24, 2016, to the development questionnaire provided by OWCP. In response to a question regarding whether there was any animosity between her and the postmaster by reason of a personal association away from work, appellant responded in the negative and stated that they did not have any personal association with each other away from work. Appellant reported that on March 18, 2016 the postmaster became upset and loud after she asked him a question about the rural route count and then twice threatened to send her home before she went to the dock area. Appellant asserted that two coworkers who submitted witness statements, D.S. and P.T, were nowhere near the back dock area and that she, the postmaster, and G.Z. were the only people in the dock area. She reported that the postmaster “used his hand” twice on her, the first time while they went back to the dock area and the second time when he shoved/pushed her to get her out of the building. Appellant advised that she did not touch the postmaster or curse at him.

In an April 26, 2016 statement, appellant advised that on March 18, 2016 the postmaster put his hand on her right shoulder, yelled at her, and threatened to send her home just because she asked a question. She asserted that, although she had a disagreement with the postmaster about some paperwork, she did not get out of control, get in his face, hit him, or touch him in any way “to cause [him] to shove or push on my right shoulder.” Appellant advised that she did what the postmaster asked her to do, but she supposed that she did not move fast enough and asked the wrong questions. In an April 27, 2016 statement, appellant indicated that the investigating police officer on March 18, 2016 told her that he did not arrest the postmaster because her coworkers reported “something completely different” than what she reported. She noted that, on the date of the incident, D.S was nowhere near the back swinging doors and that P.T. was standing in the middle of the work floor.

In an April 25, 2016 statement, a coworker, M.P., indicated that the postmaster put his hands on appellant on March 18, 2016, but noted, “I don’t know how hard it is [sic] but [the postmaster] did touch [appellant].” The coworker stated that appellant was not that loud, but was just “upset of being harass [sic] by [the postmaster].”

Another coworker, D.N., reported in an April 26, 2016 statement that on March 19, 2016 a coworker, P.T., asked appellant several times to sign some paperwork that he made a mistake on and that appellant refused these requests. Appellant told P.T. that “she was tired of his [bull....] with her paperwork.” The coworker believed that appellant raised her voice because P.T. kept asking her to sign the paperwork after she told him two or three times that she would not do so, but she felt that appellant’s actions did not rise to the level of getting loud or screaming. The coworker advised that the postmaster became upset with appellant after she asked a question about the rural route count. She indicated that the postmaster threatened to send appellant home and did not answer her questions about why he was sending her home.

In an undated statement, another coworker, L.M., indicated that on March 18, 2016 she heard appellant conversing with P.T. and the postmaster and that she was not sure what they were talking about other than that appellant exclaimed, in part, “But he wasn’t there.... You weren’t there!” The coworker indicated that appellant was always loud whether she was happy, sad, or angry, so she felt that her actions were not unusual. The postmaster reportedly stated to appellant, “Come on, let’s take this outside! Come on let me show you!” and appellant then walked in front of the postmaster by the space between the double doors and the men’s bathroom. The coworker indicated that appellant then screamed, “I’m calling the cops! He touched me!” The postmaster told appellant to grab her things and go, and appellant grabbed her purse and jacket and left. The coworker noted that G.Z. and the postmaster were in the dock area after appellant left and that the postmaster stated, “I didn’t even grab her hard! I just went like this, but very gently!” The postmaster demonstrated his earlier action on G.Z. by placing one hand under her elbow and one hand over her shoulder “like when you want to help an old lady down a curve.”

In a May 9, 2016 letter, an employing establishment official indicated that there was no animosity on behalf of the postmaster toward appellant, but noted that the postmaster did call a meeting with appellant and a union representative about appellant’s continual outbursts on the workroom floor. The official indicated that the employing establishment and appellant’s union had settled on a seven-day suspension to be served by appellant as a result of her behavior.⁴ The official noted that no charges were brought by the police against the postmaster with regard to the March 18, 2016 incident.

Appellant submitted an April 18, 2016 report from Dr. David E. Hamming, an attending Board-certified orthopedic surgeon, who diagnosed status post right shoulder arthroscopic rotator cuff repair and indicated that she could return to work on April 18, 2016 with restrictions of no overhead work and no lifting more than 150 pounds. He listed the dates of injury as December 15, 2011 and May 13, 2013. In another April 18, 2016 report, Dr. Hamming diagnosed “shoulder strength status post right shoulder reaggravation” and recommended a home exercise program and strength conditioning.

In a May 16, 2016 decision, OWCP denied appellant’s claim for a March 18, 2016 work injury. It noted that it had accepted that the postmaster “came into physical contact” with appellant when he escorted/guided her from the building on March 18, 2016. OWCP further found that appellant had not established fact of injury because the medical evidence was not insufficient to establish that a medical condition was diagnosed in connection with the claimed incident.

Appellant disagreed with the May 16, 2016 decision and, through counsel, requested a telephone hearing with a representative of OWCP’s Branch of Hearings and Review. She submitted a March 20, 2016 statement in which she discussed the events of March 18, 2016, including her discussion with P.T. about his attempt to have her sign paperwork which contained mistakes. Appellant indicated that she asked the postmaster a question about how work time

⁴ Appellant later submitted a Notice of Removal issued to her by the postmaster on March 31, 2016, but it is unclear from the record whether the 7-day suspension action constituted a resolution of the March 31, 2016 Notice of Removal.

with the nutting truck would be credited and that there was a disagreement among several coworkers and the postmaster about what the postmaster had previously stated about the matter. She advised that the postmaster then told her that he would send her home if she did not return to work. Appellant asked the postmaster to give her a few seconds to get her cell phone and he then yelled, "No, come outside now and I mean it, you have five seconds to come outside before I send you home." She indicated that, as she was going through double swinging doors inside the office to go to the dock area, the postmaster placed his hand on her right shoulder to get her to hurry up and walk out to the dock. Appellant asked the postmaster, "Why are you putting your hand on me?" and he turned to her and pushed her with his hand again to give her a push to the dock because she had paused to ask him why he put his hand on her. Appellant denied that she spoke loudly or acted in a threatening manner on March 18, 2016.

During the hearing held on January 23, 2017, appellant testified that on March 18, 2016 the postmaster put his hand on her as she was walking towards the dock in her workplace. She indicated that the postmaster put his hands on her a second time that day and actually shoved her in her right shoulder in an attempt to get her outside the building. The postmaster responded to appellant's January 23, 2017 hearing testimony and asserted that at no time did he push, shove, or even touch appellant's shoulder hard in any way. He indicated that he touched appellant sympathetically to calm her down.

Appellant submitted a Notice of Removal that the postmaster issued to her on March 31, 2016 due to her conduct in the workplace on March 18, 2016. The document contained a recitation of the March 18, 2016 incident signed by the postmaster. He indicated that appellant eventually left the workplace of her own volition after she repeatedly refused his requests to leave the workplace due to her disruptive actions and stated, "I'm not going anywhere." The postmaster asserted that, while appellant was leaving the workplace, he only gently put his hand on her right shoulder and stated her name in order to try to get her to focus and calm down. The Notice of Removal advised appellant that she had 14 days to file a grievance with respect to the proposed action. Appellant did, in fact, file a grievance with respect to the Notice of Removal and she submitted several documents relating to her grievance. An April 25, 2016 document from a union representative indicated that appellant's grievance was denied at the Step 1 level of the grievance process and would be appealed to the Step 2 level.⁵

In a duty status report (Form CA-17), dated May 26, 2016, a person with an illegible signature listed the history of injury as reported by appellant as "postmaster shoved on my [right] shoulder twice, causing swelling [and] aggravation to [right] shoulder." The person provided a diagnosis due to injury of right shoulder strain and indicated that appellant was able to resume work on April 13, 2016 with permanent restrictions of no lifting over 50 pounds with her right shoulder.

⁵ The union representative attached a document produced in connection with the grievance process which was signed by the postmaster on an unspecified date and entitled "Management Contention." The postmaster asserted in the document that appellant provided false statements on March 18, 2016 when she told the police that he subjected her to physical harm. In a March 21, 2016 statement, appellant asserted that on March 19, 2016 the postmaster pushed/shoved her on her right shoulder.

Appellant resubmitted a copy of the April 18, 2016 report in which Dr. Hamming recommended a home exercise program and strength conditioning, as well as copies of some previously submitted witness statements. She also submitted a referral form for a medical appointment.

In a decision dated March 10, 2017, OWCP's hearing representative affirmed OWCP's May 16, 2016 decision finding that appellant had not established a March 18, 2016 work injury. She found that appellant had not established that the postmaster shoved or assaulted her on March 18, 2016. The hearing representative noted that the March 18, 2016 police report and multiple witness statements did not support appellant's account of the incident, and indicated that the evidence of record showed that the postmaster lightly touched appellant on March 18, 2016. She noted that appellant had not sought medical treatment until a month after the March 18, 2016 incident and that there was lack of factual evidence supporting that she was injured as claimed.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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 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.⁶ These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether the fact of injury has been established. There are two components involved in establishing 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.⁸ Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. 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

⁶ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *S.P.*, 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989). A traumatic injury refers to injury caused by a specific event or incident or series of incidents occurring within a single workday or work shift whereas an occupational disease refers to an injury produced by employment factors which occur or are present over a period longer than a single workday or work shift. 20 C.F.R. §§ 10.5 (q), (ee); *Brady L. Fowler*, 44 ECAB 343, 351 (1992).

⁸ *Julie B. Hawkins*, 38 ECAB 393 (1987).

⁹ *John J. Carlone*, 41 ECAB 354 (1989).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS

Appellant filed a claim alleging that on March 18, 2016 she sustained injury to her right shoulder because the postmaster at her workplace pushed/shoved her twice in her right shoulder and aggravated an old injury. She stopped work on March 24, 2016.

In a May 16, 2016 decision, OWCP denied appellant's claim for a March 18, 2016 work injury. While it found that appellant had not established her allegation that the postmaster shoved or pushed her on March 18, 2016, it found that the postmaster had lightly placed his hand on appellant's right shoulder on March 18, 2016. It further found that the medical evidence was insufficient to establish that a medical condition was diagnosed in connection with the accepted incident. In a March 10, 2017 decision, an OWCP hearing representative affirmed OWCP's May 16, 2016 decision denying appellant's claim for a March 18, 2016 work injury.¹¹

In addressing appellant's claim for a March 18, 2016 work injury, the Board will first address the nature of the March 18, 2016 employment incident. It will then address whether appellant submitted sufficient medical evidence to establish a specific, diagnosed condition due to an accepted employment incident.

First, the Board finds that OWCP properly accepted a March 18, 2016 employment incident in the form of the postmaster placing his hand on appellant's right shoulder. While the precise manner in which the postmaster touched appellant on March 18, 2016 remains unclear, the evidence does establish that there was physical contact. Although appellant asserted that the postmaster pushed or shoved her right shoulder on March 18, 2016, the Board finds that the totality of the evidence, including the police report of the March 18, 2016 incident, coworker witness statements, and the postmaster's own statements, show that the postmaster at most touched appellant lightly on her shoulder on March 18, 2016.

In a March 18, 2016 report of the Zion Police Department, the investigating police officer interviewed a coworker, G.Z., who indicated that the postmaster escorted appellant out of the building, but did not push or shove her or do anything "that appeared to be inappropriate." The coworker advised that she did not observe the postmaster touch appellant at any point. The Board notes that the provision of this statement is particularly noteworthy because appellant acknowledged in her own statements that G.Z. was the coworker who was closest to the dock area when she passed that area to exit the premises. The police officer also interviewed the postmaster who indicated that he guided appellant out of the building by having one hand hover over her upper back while guiding her forward with the other hand. Although appellant told the

¹⁰ See *I.J.*, 59 ECAB 408 (2008); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹¹ OWCP's hearing representative did not explicitly accept the incident, but she did not provide any clear indication that she was modifying the basis for the denial of appellant's claim as delineated in OWCP's May 16, 2016 decision.

officer that the postmaster pushed her out the door as she exited the premises,¹² the officer noted that he advised appellant that there was not enough evidence to show that a crime had been committed by the postmaster. Moreover, the coworker witness statements in the record do not support appellant's contention that the postmaster pushed or shoved her on March 18, 2016. In a March 18, 2016 statement, G.Z indicated that on March 18, 2016 she observed the postmaster put his hands on appellant's shoulders to escort her from the area. She advised that the postmaster did not push or shove appellant. Another coworker, D.S., indicated that he observed appellant speaking loudly in the workplace on March 18, 2016 and that, when he returned to the workplace after stepping out for a period, he saw the postmaster escort appellant from the building without touching her.¹³ Moreover, the postmaster consistently indicated that he only lightly touched appellant. In a March 18, 2016 statement, the postmaster indicated that on March 18, 2016, after appellant repeatedly failed to respond to his requests to lower her voice, he put his hand on her shoulder hoping to calm her down and defuse the situation. He later indicated that at no time did he push, shove, or even touch appellant's shoulder hard in any way. The postmaster noted that he touched appellant sympathetically to calm her down.

Second, the Board further finds that OWCP properly determined that appellant failed to submit medical evidence establishing that the March 18, 2016 employment incident, *i.e.*, the postmaster's touching of appellant's right shoulder, caused a diagnosed injury to that part of appellant's body. Therefore, she failed to establish the fact of injury on March 18, 2016 as alleged.¹⁴

Appellant submitted an April 18, 2016 report from Dr. Hamming, an attending physician, who diagnosed status post right shoulder arthroscopic rotator cuff repair and indicated that she could return to work on April 18, 2016 with restrictions of no overhead work and no lifting more than 150 pounds. In another April 18, 2016 report, Dr. Hamming diagnosed shoulder strength status post right shoulder reagravation and recommended a home exercise program and strength conditioning.

The Board finds that the submission of these reports does not establish appellant's claim for a March 18, 2016 work injury. The reports are of limited probative value on the relevant issue of this case because they do not contain a medical opinion that appellant sustained a diagnosed medical condition due to the accepted March 18, 2016 incident. The Board has held that medical evidence which does not offer a clear opinion regarding a given medical matter is of limited probative value regarding that matter.¹⁵ In the April 18, 2016 reports, Dr. Hamming

¹² In other statements, appellant asserted that the postmaster made contact with her twice on March 18, 2016, the first time while they went back to the dock area and the second time when he shoved/pushed her to get her out of the building.

¹³ In an April 25, 2016 statement, a coworker, M.P., advised that the postmaster put his hand on appellant on March 18, 2016 but noted, "I don't know how hard it is [sic] but [the postmaster] did touch [appellant]." The coworker also said that appellant was just "upset of being harass [sic] by [the postmaster]." However, he did not describe which particular actions of the postmaster constituted harassment.

¹⁴ See *supra* notes 8 and 9.

¹⁵ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

diagnosed right shoulder conditions and recommended work restrictions and participation in home exercise program and strength conditioning, but he did not provide any opinion on the cause of these conditions or otherwise indicate that appellant sustained an injury due to the accepted March 18, 2016 employment incident.¹⁶

In a duty status report (Form CA-17), dated May 26, 2016, a person with an illegible signature listed the history of injury as reported by appellant as “Postmaster shoved on my [right] shoulder twice, causing swelling [and] aggravation to [right] shoulder.” The person provided a diagnosis due to injury of right shoulder strain and indicated that appellant was able to resume work on April 13, 2016 with permanent restrictions of lifting over 50 pounds with her right shoulder. The Board finds that this report is of limited probative value as it is not clear that it was completed by a physician within the meaning of FECA and therefore does not constitute probative medical evidence. The Board has held that a report of a nonphysician does not constitute probative medical evidence.¹⁷

For these reasons, appellant failed to meet her burden of proof to establish a March 18, 2016 work injury and OWCP properly denied her claim.

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 failed to meet her burden of proof to establish a right shoulder condition on March 18, 2016.

¹⁶ In one of the April 18, 2016 reports, Dr. Hamming mentioned dates of injury of December 15, 2011 and May 13, 2013, but he did not provide any further explanation for why he listed these dates.

¹⁷ *R.S.*, Docket No. 16-1303 (issued December 2, 2016); *L.L.*, Docket No. 13-829 (issued August 20, 2013). *See* 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

ORDER

IT IS HEREBY ORDERED THAT the March 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 24, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board