

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

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**K.B., Appellant**

**and**

**U.S. POSTAL SERVICE, LOGANVILLE POST  
OFFICE, Loganville, WI, Employer**

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**Docket No. 17-1997  
Issued: July 27, 2018**

*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  
ALEC J. KOROMILAS, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 25, 2017 appellant filed a timely appeal from a March 27, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>3</sup>

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<sup>1</sup> A claimant has 180 days from the date of OWCP's decision to timely file an appeal. 20 C.F.R. § 501.3(e). In this case, the 180-day period for the March 27, 2017 decision expired on Saturday, September 23, 2017. If the last day to file an appeal is on a Saturday, Sunday, or Federal holiday, the 180-day period runs until the close of the next business day. 20 C.F.R. § 501.3(f)(2). The appeal in this case, received by the Board on Monday, September 25, 2017, is therefore timely.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

<sup>3</sup> The Board notes that appellant submitted additional evidence after OWCP rendered its March 27, 2017 decision. The Board's jurisdiction, however, is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, the Board is precluded from reviewing this additional evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1); *Dennis E. Maddy*, 47 ECAB 259 (1995); *James C. Campbell*, 5 ECAB 35, 36 n.2 (1952).

## ISSUE

The issue is whether appellant met her burden of proof to establish that she developed a bilateral shoulder condition in the performance of duty, as alleged.

## FACTUAL HISTORY

On February 1, 2017 appellant, then a 54-year-old rural carrier, filed an occupational disease claim (Form CA-2) alleging that her arms pulled out of joint while she was loading a cart while in the performance of duty, causing her to drop items on February 4, 2016. She first became aware of her claimed condition and of its relationship to her federal employment on February 4, 2016. Appellant notified her supervisor on February 1, 2017. On the reverse side of the claim form, her supervisor indicated that appellant's injury existed prior to February 4, 2016.<sup>4</sup> Appellant reported that she was unable to lift her arms after that day and that a magnetic resonance imaging (MRI) scan revealed rotator cuff arthritis and excessive use in the shoulder. She noted that her left shoulder was aggravated from overuse as a result of over compensating following a previous work-related right arm injury.

By development letter dated February 14, 2017, OWCP notified appellant that the evidence of record was insufficient to support her claim. It noted that it was unclear as to whether she was claiming a traumatic injury or an occupational disease. OWCP advised appellant of the medical and factual evidence needed and provided a questionnaire for her completion. The questionnaire advised her to describe in detail the employment-related activities which she believed contributed to her condition, how often she performed the activities described, for how long on each occasion, and all activities and hobbies outside of her federal employment. It also requested that she specify whether she was claiming an occupational disease or traumatic injury based on the definitions provided. Appellant was afforded 30 days to submit the requested evidence.

In a March 1, 2017 narrative statement, appellant reported that she was claiming both a traumatic injury and occupational disease claim for her bilateral shoulder conditions. She noted that her conditions stemmed from an April 30, 2014 injury to her right shoulder, which caused her to overuse her left arm, shoulder, and neck to compensate for her right shoulder. Appellant stated that, after she was cleared to return to work, her right shoulder and hand caused her to drop items and multiple times she would try to catch these items from falling which would cause sudden jerky motions to both shoulders with pain and numbness. She reported that on her last days of work at the employing establishment on February 2, 2016, there were bundles and parcels which had shifted on her work cart. Appellant tried to grab the items from falling and felt like her arms were "pulled off from her shoulders," causing her to scream. She explained that she had previously been diagnosed with thoracic outlet syndrome caused by the April 30, 2014 injury. Appellant was scheduled to undergo surgery on February 15, 2016, but it was cancelled because the paperwork had not been approved. She reported that her condition worsened and on February 24, 2016, her physician informed her that she needed a right shoulder titanium replacement. Appellant stated that she did not have any shoulder, neck, or nerve

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<sup>4</sup> The record reflects that appellant has prior traumatic injury claims with dates of injury ranging from January 1, 2012 through April 30, 2014.

problems prior to the April 30, 2014 injury. She noted that her last day of work was on February 4, 2016 the day when her shoulders were sharply jerked while she was catching the tubs and parcels from falling off the work cart.

Appellant also submitted a response to OWCP's questionnaire dated March 1, 2017 and described her employment-related activities which she believed caused her condition. She reported repetitive movement of sorting mail, overreaching for bundles, heavy lifting, extending out arms with weight, and jerking open mailboxes. Appellant reported that for two hours in the morning she would sort mail and parcels and pull down mail. She would case mail for an hour and spend up to 45 minutes with outgoing mail and parcels. No further evidence was received.

By decision dated March 27, 2017, OWCP denied appellant's claim, finding that the evidence of record failed to establish that the "injury or event" occurred as alleged. It noted that the facts of the injury suggested a traumatic injury occurring in a single incident or a single work shift per her statement "arm pulled out loading cart" on February 4, 2016. However, appellant's response to OWCP's development letter noted a February 2, 2016 date of injury, creating a discrepancy regarding whether the injury occurred on February 2 or 4, 2016. As such, OWCP reported that it was unable to make a finding of injury occurring as alleged. It advised appellant to file a Form CA-1 if she was alleging a traumatic injury claim.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of establishing 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 or specific condition for which compensation is claimed is causally related to the employment injury.<sup>6</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>7</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>8</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

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

<sup>6</sup> *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

<sup>7</sup> *Michael E. Smith*, 50 ECAB 313 (1999).

<sup>8</sup> *Elaine Pendleton*, *supra* note 6.

## ANALYSIS

The Board finds that this case is not in posture for decision.<sup>9</sup>

In this case, appellant filed an occupational disease claim (Form CA-2) alleging that she developed bilateral arm and shoulder conditions. In a March 1, 2017 narrative statement, she reported that she was claiming both a traumatic injury and occupational disease claim for her bilateral shoulder conditions. Appellant noted that her conditions stemmed from an April 30, 2014 right shoulder employment injury, and thereafter from overusing her left arm, shoulder, and neck to compensate for her right shoulder injury. She stated that, after she was cleared to return to work, her right shoulder and hand caused her to drop items and multiple times she would try to catch these items from falling which would cause sudden jerky motions to both shoulders with pain and numbness. Appellant reported that her last day of work at the employing establishment was February 2, 2016, when bundles and parcels had shifted on her work cart. She tried to grab the items from falling and it felt like her arms were pulled off from her shoulders, causing her to scream. Appellant noted that her last day of work was on February 4, 2016 when her shoulders were sharply jerked while she was catching the tubs and parcels from falling off the work cart.

On March 1, 2017 appellant also responded to OWCP's questionnaire and described the employment-related activities which she believed caused her condition and the amount of time spent on each activity. She reported repetitive movement of sorting mail, overreaching for bundles, heavy lifting, extending out arms with weight, jerking open mailboxes.

The March 27, 2017 OWCP decision found that appellant failed to establish fact of injury. It noted that her allegations suggested a traumatic injury, but there was a discrepancy regarding whether the injury occurred on February 2 or 4, 2016. As such, OWCP concluded that it was unable to make a finding of injury and advised appellant to file a Form CA-1 if she wished to claim a traumatic injury. OWCP generally stated that it was unable to make a finding of an injury occurring as alleged.

The Board finds that the discrepancies found in OWCP's March 27, 2017 decision with regard to the purported date of injury is more in keeping with a traumatic injury, which is a condition of the body caused by a single event or incident or series of events or incidents occurring within a single workday or work shift,<sup>10</sup> *versus* an occupational disease or illness produced by the work environment over a period longer than a single workday or shift.<sup>11</sup> Furthermore, although OWCP noted in its decision that the factual evidence submitted by appellant suggested a traumatic injury, it also advised appellant to complete a Form CA-1 claim for a traumatic injury. As such, OWCP has intermingled a traumatic injury claim with an occupational disease claim and, thus, did not discharge its burden to make findings as to whether appellant sustained an occupational disease or a traumatic injury in the performance of duty.<sup>12</sup>

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<sup>9</sup> G.S., Docket No. 16-0908 (issued October 26, 2017).

<sup>10</sup> 20 C.F.R. § 10.5(ee).

<sup>11</sup> *Id.* at § 10.5(q).

<sup>12</sup> *See* 20 C.F.R. § 10.126.

The Board finds, therefore, that the basis for the denial of appellant's claim remains unclear and is not in keeping with 20 C.F.R. § 10.126.<sup>13</sup> As fact of injury is a material point in a compensation case and, because of its materiality, OWCP must clearly state whether fact of injury is accepted and, if fact of injury is not accepted, OWCP must clearly specify the basis for denial.<sup>14</sup>

Therefore, the case shall be remanded to OWCP for any necessary further development, to be followed by a *de novo* decision which shall include findings of fact and a clear and precise basis for denial of appellant's claim as required by statute,<sup>15</sup> regulation,<sup>16</sup> OWCP's procedures,<sup>17</sup> and prior Board precedent<sup>18</sup> regarding whether appellant sustained an occupational disease or a traumatic injury in the performance of duty.

### CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>13</sup> A final decision of OWCP must contain findings of fact and a statement of reasons.

<sup>14</sup> *Elaine Pendleton*, *supra* note 6.

<sup>15</sup> See 5 U.S.C. § 8124(a), which provides: "OWCP shall determine and make a finding of fact and make an award for or against payment of compensation."

<sup>16</sup> 20 C.F.R. § 10.126.

<sup>17</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowance*, Chapter 2.1400.5(e) (February 2013), which provides in pertinent part: "The [claims examiner's] evaluation of the evidence should be clear and detailed so that the reader understands the reason for the disallowance of the benefit and the evidence necessary to overcome the defect of the claim."

<sup>18</sup> See *e.g.*, *Elaine Pendleton*, *supra* note 6; *see also* *A.C.*, Docket No. 17-1927 (issued April 12, 2018); *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 27, 2017 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further proceedings consistent with this opinion.

Issued: July 27, 2018  
Washington, DC

Patricia H. Fitzgerald, Deputy 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