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

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| **S.R., Appellant** | ) | |
| **and** | ) | **Docket No. 22-0453** |
| | ) | **Issued: March 2, 2023** |
| **U.S. POSTAL SERVICE, NORTH METRO PROCESSING & DISTRIBUTION CENTER, Duluth, GA, Employer** | ) | |

*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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On February 3, 2022 appellant filed a timely appeal from a January 28, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. § 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.[2]

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the January 28, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

## ***ISSUE***

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted December 3, 2021 employment incident.

## ***FACTUAL HISTORY***

On December 5, 2021 appellant, then a 30-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2021 she injured her left shoulder, neck, and lower back in a motor vehicle accident (MVA), which occurred while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated that appellant was not injured in the performance of duty because she had no injuries, was not seeking medical attention, and there was no damage to the postal vehicle.

In support of her claim, appellant submitted a December 3, 2021 statement explaining that she was driving to her next stop and was rear ended while waiting in the turning lane. The other driver told appellant that she thought appellant was turning, but appellant noted that she could not turn until the passing traffic cleared. Appellant indicated that she was not seeking medical attention.

A December 3, 2021 statement from A.J., the driver of the other vehicle involved in the MVA, noted that she was driving behind a postal truck while it was preparing to turn on the right and she hit it from behind.

Appellant also submitted a photograph of her postal truck in front of a car with its front bumper on the ground.

A December 3, 2021 emergency department patient visit summary indicated that appellant was seen by Dr. Wilfredo Rios, Board-certified in emergency medicine, who noted a motor vehicle collision, and diagnosed acute cervical myofascial strain, acute lumbar myofascial strain, and first trimester pregnancy.

OWCP also received a December 16, 2021 follow-up visit summary signed by Virginia Dupraw, a nurse practitioner, relating that appellant had not improved since her last visit and had moderate pain. Ms. Dupraw diagnosed strains of muscle, fascia, and tendon of the long head of the left biceps, neck (cervical), and lower back. She placed appellant on limited-duty work with restrictions, including no lifting, pushing, or pulling over five pounds, no over shoulder or overhead work, no repetitive bending or twisting, and no stairs or ladder climbing.

In a development letter dated December 17, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of evidence needed and provided a questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP received additional evidence. The employing establishment completed and signed an authorization for examination and/or treatment (Form CA-16). In Part B, attending physician's report, dated December 6, 2021, Dr. Brandon L. Dawkins, a Board-certified occupational medicine specialist, related appellant's history of injury in an MVA, as well as a history of a lumbar herniated disc three years prior. He noted that no x-ray could be performed because she was

pregnant and diagnosed neck strain, lumbar strain, and left shoulder strain. Dr. Dawkins checked a box marked "Yes," indicating that he believed that appellant's condition was caused or aggravated by an employment activity. He advised that she could resume light-duty work with restrictions, including no lifting, pushing, or pulling over 10 pounds, no over shoulder or overhead work, no repetitive bending or twisting, and no stairs or ladder climbing.

Appellant also submitted a December 23, 2021 follow-up visit summary from Ms. Dupraw relating that appellant continued to have moderate pain. Ms. Dupraw diagnosed strains of muscle, fascia, and tendon of the long head of the left biceps, neck (cervical), and lower back and advised that appellant should remain on light-duty work with restrictions.

By decision dated January 28, 2022, OWCP accepted that the December 3, 2021 employment incident occurred, as alleged, but denied appellant's claim, finding that she had not submitted medical evidence containing a medical diagnosis by a physician in connection with her accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including 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,[4] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[5] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that 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. The second component is whether the employment incident caused a personal injury.[7]

[3] *Supra* note 1.

[4] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.[8] 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 specific employment factors identified by the employee.[9]

## ***ANALYSIS***

The Board finds that appellant has met her burden of proof to establish diagnosed medical conditions in connection with the accepted December 3, 2021 employment incident.

Appellant submitted an attending physician's report dated December 6, 2021 in which Dr. Dawkins diagnosed neck strain, lumbar strain, and left shoulder strain. Dr. Dawkins checked a box marked "Yes," indicating that he believed that her condition was caused or aggravated by an employment activity. The Board finds, therefore, that the report by him is sufficient to establish diagnosed medical conditions in connection with the accepted employment incident.[10]

Consequently, the case must be remanded for consideration of the medical evidence with regard to the issue of causal relationship.[11] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

## ***CONCLUSION***

The Board finds that appellant has met her burden of proof to establish diagnosed medical conditions in connection with the accepted December 3, 2021 employment incident.[12] The Board further finds, however, that the case is not in posture for decision as to whether any of the diagnosed medical conditions are causally related to the accepted employment incident.

[8] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[9] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

[10] *See E.T.*, Docket No. 22-1085 (issued January 18, 2023); *E.L.*, Docket No. 21-0587 (issued July 6, 2022); *see also T.C.*, Docket No. 17-0624 (issued December 19, 2017).

[11] *See S.R.*, Docket No. 22-0421 (issued July 15, 2022); *S.A.*, Docket No. 20-1498 (issued March 11, 2021).

[12] The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the January 28, 2022 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: March 2, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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