



By letter dated April 18, 2011, OWCP advised appellant of the factual and medical evidence needed to establish her claim and requested that she submit such evidence.

Appellant submitted a March 24, 2011 statement and a May 13, 2011 e-mail addressing the incident. After finishing attendance in her classroom a student knocked on the door. Appellant opened the door and handed the student an office referral form and instructed him to write on the back that he knew what time seminar started and he chose to come late and accepted the consequences for his action. The student failed to comply, argued with her and then just told her to “write him up.” Appellant instructed him to fill out the form in the hallway and then he would be admitted to the class. The student pushed his body against her with increasing pressure and she became frightened he was going to strike her. Appellant told him to “stop touching me” and he finally stepped away. She stated that the student pulled the door open while her hand was on it and injured her shoulder. Appellant sought treatment from a psychiatrist for anxiety and a physical therapist for her injured shoulder.

A March 24, 2011 military police report noted that appellant claimed being assaulted by a student while in class. The officer stated that her investigation revealed that appellant and a student were involved in a verbal altercation that did not turn physical. The investigation revealed that a student was late to class resulting in appellant taking administrative action against him by having him fill out a referral to the principal’s office. The student was permitted to return to the classroom after filling out the referral at which time he attempted to enter the room by passing around appellant while she blocked the door. The officer noted that a verbal altercation occurred between appellant and the student which was heard by other students in the classroom. The student left subsequently to attend another class. The officer noted that appellant did not sustain any injuries. The student submitted a redacted statement and asserted that he arrived at appellant’s class and the door was locked. Appellant would not permit him in the room until he filled out a referral for being tardy. The student prepared the form and attempted to enter the classroom but she would not let him in. He noted that he did not touch or push appellant but her hand was on the door handle and her hand touched his stomach because she was trying to keep him out of the classroom.

The record contains several redacted witness statements from students who noted the verbal altercation between appellant and the student and noted that there was no physical contact by the student. One witness statement noted that appellant was blocking the doorway with her hands on the door frame so that the student could not enter the classroom. The student tried to go around her and it appeared that their shoulders may have touched. The witness indicated that appellant stepped to the left to block the student and he backed up into the hallway. Another statement noted that appellant placed her hands on the student’s left shoulder to prevent him from entering the classroom.

In a decision dated May 24, 2011, OWCP denied appellant’s claim finding that the evidence was not sufficient to establish that the employment incident occurred as alleged on March 24, 2011.

On June 2, 2011 appellant requested a telephone hearing that was held on October 6, 2011. In a March 24, 2011 statement, an unidentified school employee noted being informed by an officer that appellant asserted that she was attacked by a student. The school

employee went to the classroom, observed that appellant was upset and took her blood pressure which was initially elevated but went down after 30 minutes.

Treatment notes from Dr. Klaus Gebel, a psychiatrist, dated March 28 to May 12, 2011, diagnosed panic disorder and adjustment disorder in an occupational stress situation. Appellant reported being attacked, threatened and pushed by a student. She noted a history of stress and cardiac arrhythmias five years prior during a college attack by another student. Dr. Gebel noted that appellant had an acute stress situation due to a physical attack by a student which reactivated the earlier trauma from college. He found her disabled. The reports from Dr. Wolfgang Klarner, Jr., a family practitioner, dated April 12 to December 4, 2011, noted appellant's treatment for a sprained cervical spine and left shoulder. On September 20, 2011 Dr. Klarner treated her for high blood pressure and tachycardia. Appellant reported being assaulted by a student and developing emotional conditions. On November 17, 2011 Dr. Klarner treated her for injuries from a March 24, 2011 incident in which a student physically attacked her. He noted complaints and findings and diagnosed cervical strain, left shoulder strain, tendinopathy of the tuberculum and panic disorder. Dr. Klarner opined that appellant's complaints were unequivocally attributed to the March 24, 2011 work incident. An April 28, 2011 disability slip from Dr. Martin Klupp, a psychiatrist, stated that appellant was disabled through May 2, 2011.

In a decision dated December 15, 2011, OWCP's hearing representative affirmed OWCP's decision dated May 24, 2011, finding that appellant submitted insufficient evidence to establish that the claimed work incident occurred as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA 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 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 is causally related to the employment injury."<sup>2</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.<sup>3</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>4</sup> In some traumatic injury cases this component can be established by an employee's uncontroverted statement on the Form CA-1.<sup>5</sup>

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<sup>2</sup> *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>3</sup> *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

<sup>4</sup> *Supra* note 2.

<sup>5</sup> *John J. Carlone*, 41 ECAB 354 (1989).

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action.<sup>6</sup> A consistent history of the injury as reported on medical reports, to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the incident.<sup>7</sup> Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>8</sup> Although an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence,<sup>9</sup> an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.<sup>10</sup>

The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.<sup>11</sup>

### ANALYSIS

Appellant filed a claim on March 25, 2011 alleging that on March 24, 2011 she was assaulted by a student, after giving him a referral for being tardy, injuring her shoulder and causing high blood pressure. The Board finds that there are such inconsistencies in the evidence which cast doubt upon the validity of the claim. The Board finds that the claimed employment incident did not occur as alleged.

Appellant asserted that on March 24, 2011 she was physically assaulted by a student who was late to her class. She specifically indicated in statements dated March 24 and May 13, 2011, that the student failed to comply with her request to fill out a form in the hallway prior to entering the class and he pushed his body against her with increasing pressure and she told him to "stop touching me" and he finally stepped away. Appellant indicated that he pulled the door open while her hand was on it, injuring her shoulder. The Board finds that the evidence of record does not corroborate her assertion. A military police investigation and report dated March 24, 2011 revealed that appellant and a student were involved in a verbal altercation that did not become physical. The investigation revealed that a student was late to class resulting in

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<sup>6</sup> *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

<sup>7</sup> *Id.* at 255-56.

<sup>8</sup> *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

<sup>9</sup> *Robert A. Gregory*, 40 ECAB 478 (1989).

<sup>10</sup> *Joseph A. Fournier*, 35 ECAB 1175 (1984).

<sup>11</sup> *See Richard A. Weiss*, 47 ECAB 182 (1995); *John M. Tornello*, 35 ECAB 234 (1983).

appellant requesting that he fill out a referral form to the principal's office. Appellant reported that the student was permitted to return to the classroom after filling out the referral, at which time he attempted to enter the room by passing around her while she blocked the door. The officer noted that a verbal altercation occurred between appellant and the student which was heard by other students in the classroom. The officer noted that appellant did not sustain any injuries.

One witness statement noted that it was possible that the shoulders of the student and appellant may have touched but the witness noted nothing suggestive of an assault as alleged by appellant. Another witness stated that appellant placed her hands on the student's left shoulder to prevent him from entering the classroom but did not state that the student had initiated contact as asserted by appellant. Any touching that may have occurred is not consistent with appellant's assertion that the student pushed his body against her. The inconsistencies between appellant's statements and the witness statements, in addition to the contemporaneous report of the investigating officer, do not support that physical assault occurred as alleged by appellant.<sup>12</sup>

While an injury does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, the employee's statement must be consistent with the surrounding facts and circumstances and her subsequent course of action. The lack of confirmation of the claimed incident as asserted by appellant casts doubt on the validity of appellant's claim. For these reasons, the Board finds that she has not established that the claimed incident occurred as alleged. As appellant has not established that the March 24, 2011 incident occurred as alleged, it is not necessary for the Board to consider the medical evidence regarding causal relationship.<sup>13</sup> Consequently, appellant has not met her burden of proof in establishing 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 has failed to establish that she sustained a left shoulder injury on March 24, 2011 in the performance of duty, causally related to factors of her federal employment.

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<sup>12</sup> The Board has held that physical contact, if substantiated by the evidence, may be compensable. *See Constance G. Patterson*, 41 ECAB 206 (1989). However, as explained *infra*, the evidence does not substantiate physical contact as alleged by appellant.

<sup>13</sup> *See S.P.*, 59 ECAB 184 (2007).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 15, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 25, 2012  
Washington, DC

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

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board