

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

F.B., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ossining, NY, Employer**

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**Docket No. 11-2101
Issued: May 9, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On September 21, 2011 appellant filed a timely appeal from an August 24, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on July 6, 2011.

FACTUAL HISTORY

On July 8, 2011 appellant, then a 36-year-old letter carrier, filed a traumatic injury claim alleging that her postal truck was rear ended by another vehicle in a parking lot on July 6, 2011.

¹ 5 U.S.C. § 8101 *et seq.*

She thereafter sustained neck and back pain. Appellant stopped work on that day and did not return.

In a July 7, 2011 report, Dr. Pablo A. Joo, Jr., a Board-certified family practitioner, stated that he treated appellant following a workplace injury and advised her to refrain from working until July 14, 2011. A July 11, 2011 note from Dr. Vanessa N. Dinnall, a Board-certified obstetrician and gynecologist, pointed out that appellant was 24 weeks pregnant when she was involved in a motor vehicle accident.

OWCP informed appellant in a July 18, 2011 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a report from a qualified physician explaining how the July 6, 2011 employment incident led to a neck and back condition.²

Appellant submitted new evidence. In a July 9, 2011 report, Dr. Sam J. Yee, a Board-certified physiatrist, related that she was sitting in her postal truck on July 6, 2011 when it was struck from behind by another vehicle. On physical examination, he observed diminished range of motion of the neck, upper extremities and hips, right paracervical and sternocleidomastoid muscle spasms and stiffness, bilateral shoulder tenderness and positive Spurling's, flexion-abduction-external rotation, flexion-adduction-internal rotation and straight leg raise tests. Dr. Yee diagnosed cervicgia and lower back pain secondary to the July 6, 2011 accident and recommended physical therapy for 12 weeks.³ In July 23 and August 13, 2011 follow-up reports, he opined, "I feel with a reasonable degree of medical certainty that the events as related to me on July [6], 2011 are a major contributing factor to the patient's condition."⁴

In a July 23, 2011 duty status report, Dr. Yee diagnosed neck and lower back pain. He placed appellant on disability for the period July 23 to August 13, 2011. In an August 13, 2011 duty status report, Dr. Yee diagnosed lower back pain and released her to modified duty effective August 13, 2011.⁵

By decision dated August 24, 2011, OWCP denied appellant's claim, finding the medical evidence insufficient to demonstrate that the accepted July 6, 2011 employment incident caused or contributed to a diagnosed condition.

² In a July 19, 2011 letter, OWCP informed appellant that the circumstances of her case indicated that her injury may have been caused by a responsible third party and that she may be subject to FECA's subrogation provisions. *See* 5 U.S.C. §§ 8131-8132; 20 C.F.R. §§ 10.705-10.719. The case record confirms that appellant submitted an August 9, 2011 notice of potential third-party claim to the employing establishment.

³ Appellant provided a physical therapist's report dated July 11, 2011.

⁴ This paragraph, as found in both reports, originally identified July 26, 2011 as the date of injury. This was likely a typographical error. Otherwise, the July 23 and August 13, 2011 reports essentially repeated the same health history, objective findings and diagnoses found in Dr. Yee's prior July 9, 2011 report.

⁵ Dr. Yee's duty status reports reiterated appellant's account of the July 6, 2011 work event.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,⁶ including that she is an “employee” within the meaning of FECA and that she filed her claim within the applicable time limitation.⁷ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether 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. 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 evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is evidence which includes a physician’s opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.¹⁰

ANALYSIS

While the case record supports that appellant’s postal truck was hit by a third-party vehicle in a parking lot on July 6, 2011, the Board finds that she did not establish her traumatic injury claim because the medical evidence did not sufficiently demonstrate that this accepted employment incident was causally related to a neck and back condition.

Dr. Yee remarked in a July 9, 2011 report that appellant was sitting in her postal truck on July 6, 2011 when it was rear ended by another vehicle. Following a physical examination, he diagnosed cervicalgia and lower back pain and attributed these injuries to the July 6, 2011 incident. Various medical records from Dr. Yee dated July 23 and August 13, 2011 related consistent health histories, objective findings and diagnoses and concluded “with a reasonable degree of medical certainty” that the July 6, 2011 incident was a major contributing factor to

⁶ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁷ *R.C.*, 59 ECAB 427 (2008).

⁸ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁹ *T.H.*, 59 ECAB 388 (2008).

¹⁰ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

appellant's condition. Nevertheless, he did not provide medical rationale explaining how the incident pathophysiologically caused or contributed to the injury.¹¹ Medical reports consisting solely of conclusory statements without supporting rationale are of little probative value.¹²

In a July 7, 2011 report, Dr. Joo stated that he treated appellant following a workplace injury. Additionally, Dr. Dinnall specified in a July 11, 2011 note that she was involved in a motor vehicle accident. Both physicians, however, failed to offer fortifying medical rationale¹³ or discuss whether the July 6, 2011 motor vehicle accident as described by appellant caused or contributed to a diagnosed medical condition.¹⁴ Finally, because a physical therapist is not a "physician" as defined under FECA, the physical therapist's July 11, 2011 report cannot constitute competent medical evidence.¹⁵ In the absence of rationalized medical opinion evidence, appellant failed to meet her burden.

Appellant contends on appeal that the medical evidence satisfied her burden of proof. As noted, the medical evidence did not sufficiently establish that her diagnosed cervicalgia and lower back pain resulted from the July 6, 2011 employment incident.

The Board notes that appellant submitted new evidence after the issuance of the August 24, 2011 decision. The Board lacks jurisdiction to review evidence for the first time on appeal.¹⁶ However, appellant may submit new evidence or argument as part of a formal 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 did not establish that she sustained a traumatic injury in the performance of duty on July 6, 2011.

¹¹ *Joan R. Donovan*, 54 ECAB 615, 621 (2003); *Ern Reynolds*, 45 ECAB 690, 696 (1994).

¹² *William C. Thomas*, 45 ECAB 591 (1994).

¹³ *George Randolph Taylor*, 6 ECAB 986, 988 (1954).

¹⁴ *John W. Montoya*, 54 ECAB 306, 309 (2003). *See also M.W.*, 57 ECAB 710 (2006); *James A. Wyrick*, 31 ECAB 1805 (1980) (medical opinions based on an incomplete or inaccurate history are of diminished probative value).

¹⁵ 5 U.S.C. § 8101(2); *Jennifer L. Sharp*, 48 ECAB 209 (1996). *See also Charley V.B. Harley*, 2 ECAB 208, 211 (1949) (medical opinion, in general, can only be given by a qualified physician).

¹⁶ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the August 24, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 9, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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