

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

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**L.S., Appellant**

**and**

**U.S. POSTAL SERVICE, AIRMAIL CENTER,  
Jamaica, NY, Employer**

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**Docket No. 12-1012  
Issued: March 20, 2013**

*Appearances:*  
*Paul Kalker, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge  
ALEC J. KOROMILAS, Alternate Judge

On April 12, 2012 appellant, through her attorney, filed a notice of appeal with respect to a March 2, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether appellant has established that she sustained injuries to her head, forehead, neck, shoulder and back as a result of the May 31, 2011 employment incident.

**FACTUAL HISTORY**

On May 31, 2011 appellant, then a 46-year-old general clerk, fell forward while walking up a flight of stairs. She struck the right side of her head, forehead and right shoulder against a wall. On June 22, 2011 appellant stopped work and filed a claim (Form CA-1) alleging that she sustained injuries to her head, forehead, neck, shoulder and back as a result of the May 31, 2011 employment incident.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

Dr. Anthony S. Horvath, an orthopedic surgeon, examined appellant on June 29, 2011 and diagnosed cervical and lumbar strains with associated radiculopathy and right shoulder sprain. He attributed the diagnosed conditions to appellant's May 31, 2011 work-related fall.<sup>2</sup> Dr. Horvath subsequently diagnosed shoulder impingement in addition to the previously diagnosed cervical and lumbar radiculopathy.

John J. McGee, D.O., a Board-certified physiatrist, examined appellant on July 12, 2011 and diagnosed headaches, cervical sprain/strain, cervical radiculitis, cervical disc displacement, thoracic sprain/strain, lumbar and lumbosacral sprain/strain, lumbar radiculitis, lumbar disc displacement, right shoulder contusion, right shoulder sprain/strain and right shoulder impingement syndrome. He attributed appellant's diagnosed conditions to the May 31, 2011 employment incident where she was climbing stairs, tripped and struck her head, neck and right shoulder on a wall. Dr. McGee also noted a prior medical history of chronic low back pain in November 1997 with herniated nucleus pulposus.

OWCP initially denied the claim on August 12, 2011 based on a failure to establish causal relationship.

Appellant's counsel requested reconsideration. He argued that the July 2011 reports from Dr. McGee and Dr. Horvath were sufficient to warrant further medical development by OWCP.

Following its August 12, 2011 denial, OWCP received additional medical evidence, which included treatment records, diagnostic studies and a September 23, 2011 report from Dr. Andrew M.G. Davy, an anesthesiologist with a subspecialty in pain medicine. In his report, Dr. Davy described the May 31, 2011 stair incident, as well as two prior injuries in 1997 and 2009.<sup>3</sup> Appellant primarily complained of neck pain, with secondary pain in the right shoulder and lower back. Dr. Davy believed the neck pain caused the right shoulder pain, which radiated through the right upper extremity to the third, fourth and fifth digits of appellant's hand. Appellant's lower back pain radiated to the right lower extremity and into her foot. Dr. Davy noted that a July 14, 2011 cervical magnetic resonance imaging (MRI) scan revealed a small disc herniation at C5-6 with disc space narrowing and degenerative disc changes. He also noted that a lumbar MRI scan had not been done. Dr. Davy diagnosed cervical and lumbar post-traumatic disc pathology, cervical and lumbar radiculopathy and multiple myofascial trigger points. He further indicated that he could not rule out facet syndrome. As to causal relationship, Dr. Davy indicated that the mechanism of injury -- appellant stopping her fall by hitting her head -- "translated throughout the neck and lower back." He noted that appellant had not initially complained about her lower back because the neck was more severe. Although there were preexisting neck and lower back conditions, Dr. Davy explained that, prior to the May 31, 2011 injury, appellant had been working full-time, full-duty without complaints of pain or disability, whereas currently she had severe pain and a severe disability.

OWCP denied modification by decision dated March 2, 2012.

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<sup>2</sup> Dr. Horvath also noted a prior history of chronic low back problems with spinal stenosis.

<sup>3</sup> The 1997 injury involved appellant's lower back and the 2009 injury involved both her neck and lower back.

## LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.<sup>4</sup> Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue.<sup>5</sup> An employee may establish that an injury occurred in the performance of duty as alleged but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.<sup>6</sup>

## ANALYSIS

The Board finds that case is not in posture for decision. Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden to establish entitlement to compensation; however, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>7</sup>

In support of causal relationship, appellant submitted reports from Dr. Horvath, Dr. McGee and Dr. Davy. These physicians properly noted appellant's history of injury. Dr. Horvath's June 29, 2011 report and Dr. McGee's July 12, 2011 report stated opinions supporting causal relationship between appellant's May 31, 2011 fall and the diagnosed conditions. Dr. Davy provided further support of causal relationship in his September 23, 2011 report. He indicated that the mechanism of injury, appellant stopping her fall by hitting her head "translated throughout the neck and lower back." Dr. Davy further explained that appellant's neck pain then caused the right shoulder pain, which radiated to the right upper extremity; that her lower back pain radiated to the right lower extremity and into her foot; and that while appellant had preexisting conditions, she had been working full time, without any complaints prior to the May 31, 2011 incident.

While the opinions expressed by Dr. Horvath, Dr. McGee and Dr. Davy are insufficient to discharge appellant's burden of proof that her claimed conditions are employment related, the physicians' respective opinions are sufficient to require further development of the case record by OWCP.<sup>8</sup>

On remand, OWCP should refer appellant to an appropriate specialist for evaluation and a rationalized medical opinion regarding whether her diagnosed cervical, lumbar and right shoulder conditions were caused and/or aggravated by the May 31, 2011 employment incident.

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<sup>4</sup> 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

<sup>5</sup> See *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>6</sup> *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

<sup>7</sup> *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>8</sup> See *John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

After it has developed the case record to the extent it deems necessary, a *de novo* decision shall be issued.

**IT IS HEREBY ORDERED THAT** the March 2, 2012 decision of the Office of Workers' Compensation Programs is set aside. The case is remanded for further action consistent with this order of the Board.

Issued: March 20, 2013  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board

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