

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

S.S., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Baker, LA, Employer**

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**Docket No. 15-1781
Issued: December 21, 2015**

Appearances:
Frankie Sanders, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 25, 2015 appellant, through her representative, filed a timely appeal from a July 22, 2015 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 merits of this case.

ISSUE

The issue is whether appellant has established an injury in the performance of duty on January 15, 2013.

FACTUAL HISTORY

On January 22, 2013 appellant, then a 49-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right-side lower back injury on January 15, 2013

¹ 5 U.S.C. § 8101 *et seq.*

while picking up a tray of mail. The reverse of the form indicated that appellant stopped working on January 15, 2013.

In support of the claim OWCP received a (Form CA-16) (authorization for examination and/or treatment) dated January 15, 2013 and signed by a supervisor. The physician's portion of the form, completed by Dr. Karenlyn Smith, a Board-certified family practitioner, provided a diagnosis of cervical and thoracic strain. Dr. Smith also provided a narrative report dated January 15, 2013 with a history that appellant was picking up a tray of mail, and the tray and mail fell to the ground, with her stumbling and feeling an instantaneous shock of pain.

In a narrative statement dated January 15, 2013, appellant alleged that on that day she was on her route when her supervisor arrived in a truck with additional mail. According to her, the supervisor opened the side door and appellant "began picking up the tray" of mail that included delivery point sequence (DPS) and flats, which weighed more than her 15-pound lifting restriction. Appellant asserted that as she was picking up the tray she began dropping it and she fell to the ground with the tray. She alleged that the supervisor began to help her get the mail off the ground when she felt a sharp pain in the right side of her low back.

An employing establishment human resources specialist submitted a January 17, 2013 letter indicating that appellant was working with a 20-pound lifting restriction. The specialist asserted that the diagnosis in the CA-16 form appeared to be related to a prior injury.

By statement dated January 15, 2013, appellant's supervisor indicated that she took three trays of mail to appellant, one containing the DPS mail, and two the case mail and flats. The supervisor stated that she picked up a tray of cased letters and flats and placed it in appellant's vehicle. Then she took a second tray and attempted to hand it to appellant, asking if appellant could handle it. Appellant indicated yes and placed her hands on the tray, but the supervisor did not release the tray. According to the supervisor, appellant slowly let her end of the tray fall, but no mail fell out of the tray. Appellant then took a step backward, but at no time did she indicate that she was in pain or complain of pain. The supervisor reported that later that day appellant asserted that she had a back injury and she went for treatment. As to work restrictions, the supervisor indicated that the tray was not in excess of lifting restrictions, and appellant was always told to split the mail if she even suspected a tray was too heavy for her to lift. She opined that appellant's claim for injury may be in retaliation for an investigation of appellant on the prior day regarding a gasoline station incident.

OWCP sent letters dated February 1, 2013 to appellant and the employing establishment, requesting additional evidence. Appellant was requested to complete a questionnaire with respect to the incident and any prior symptoms.

The evidence from the employing establishment also included a February 14, 2013 letter from appellant's postmaster, who noted that appellant had been working with restrictions without incident since July 7, 2012. The postmaster reported that there was only a foot of mail in each tray, and appellant was incorrect in stating that any single tray contained both DPS and flats. The postmaster also confirmed that appellant's lifting restriction was 20 pounds. There is also a response from the supervisor dated February 14, 2013 on a form with questions regarding

appellant's allegations. The supervisor reiterated her prior statement that neither appellant nor any mail fell to the ground, and the trays weighed less than 20 pounds.

By decision dated April 5, 2013, OWCP denied the claim for compensation. It found that appellant had not established that an employment incident occurred as alleged.

On April 29, 2013 appellant requested reconsideration of her claim. She submitted a statement asserting that she picked up a tray of mail with DPS and flats, and that it was over the 15-pound lifting restriction. Appellant asserted that, as she was picking up the tray, it fell to the ground and she stumbled as the tray was falling. The supervisor then began picking up the mail. Appellant reported "at the time of this" she felt a sharp pain in her right side. Appellant's representative also submitted an April 22, 2013 statement that the tray weighed over 15 pounds as "the mail was brought in a plastic tray and should have been on a box tray." The representative asserted that appellant had stumbled backward, but did not say she fell. According to the representative, "As [appellant] attempted to pick up the tray of mail, she felt a sharp pain from her neck to the back on the right side."

By decision dated June 12, 2013, OWCP reviewed the case on its merits and denied modification. It found that appellant had not established an incident as alleged.

The record indicates that on June 21, 2013 OWCP received a June 14, 2013 statement from the supervisor, who indicated that she was responding to appellant's reconsideration request and statement from her representative. The supervisor reported that she stood by her original statements and that the January 15, 2013 incident did not occur as appellant alleged. Appellant submitted a letter to her congressional representative alleging that she had injured herself when lifting a tray of mail that was over her work restrictions. On June 28, 2013 OWCP received a statement of that date from a Cheryl Brown, who stated that appellant came with her supervisor on January 15, 2013 to a medical clinic. The witness reported that the supervisor did not "state any points of disagreement concerning the injury" at that time.

On July 22, 2013 appellant again requested reconsideration. By decision dated October 15, 2013, OWCP reviewed the merits of the claim and denied modification. It found that the factual component of the claim had not been established.

Appellant again requested reconsideration on December 5, 2013. In a November 19, 2013 statement, she argued that she had established the factual and medical elements of her claim. Appellant discussed the medical evidence and argued that she had met her burden of proof. She also submitted a November 20, 2013 report from Dr. Roy Berkowitz, a Board-certified surgeon. Dr. Berkowitz provided a history that appellant was lifting a tray of mail, stumbled backward, and the mail fell to the ground. He reported that he examined her on March 26, 2013 and objective findings had been consistent with an injury on January 15, 2013. Dr. Berkowitz opined that appellant did suffer an injury as reported on January 15, 2013, based on his review of the medical history and his own examination. Appellant also submitted an April 11, 2014 report from Dr. Edward Chorette, an emergency medicine specialist. Dr. Chorette provided a history that she was lifting a heavy object at work and experienced severe low back pain. He provided results on examination and diagnosed a lumbar sprain.

By decision dated April 29, 2014, OWCP reviewed the merits of the claim and denied modification. It reviewed appellant's arguments with respect to the evidence. OWCP then reviewed the reports of Dr. Berkowitz and Dr. Chorette. As to Dr. Berkowitz, OWCP found that "while the report was not entirely sufficient to meet [appellant's] burden of proof to establish the claim, it raised an uncontroverted inference between the claimed injury or disability and your employment activities." Then OWCP asserted, "Dr. Berkowitz does not provide an opinion as to whether there is a prior preexisting condition or whether the work activities caused or aggravated a preexisting condition on either a temporary or permanent basis." As to Dr. Chorette, OWCP found that he did not "provide an opinion as to whether there is a prior preexisting condition or whether the work activities caused or aggravated a preexisting condition on either a temporary or permanent basis." The conclusion of the decision finds that appellant "did not respond to the Questionnaire for Completion, and as such correlation of a proper history with a diagnosis by a qualified physician cannot be made, and the first component of [f]act of [i]njury has not been met."²

On April 23, 2015 appellant again requested reconsideration. She argued that it appeared her claim had been denied based on the medical evidence. On May 12, 2015 appellant submitted a May 1, 2015 report from Dr. Jeffrey Andry, a Board-certified family practitioner. Dr. Andry indicated that she complained of right shoulder pain.

By decision dated July 22, 2015, OWCP reviewed the merits of the claim and denied modification. It reviewed the factual and medical evidence submitted and found the factual component of the claim had not been established.

LEGAL PRECEDENT

FECA provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."³ The phrase "sustained while in the performance of duty" in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."⁴ An employee seeking benefits under FECA has the burden of establishing that he or she sustained an injury while in the performance of duty.⁵ 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 an employment incident occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.⁶

² OWCP apparently was referring to the February 1, 2013 questionnaire.

³ 5 U.S.C. § 8102(a).

⁴ *Valerie C. Boward*, 50 ECAB 126 (1998).

⁵ *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

⁶ *See John J. Carlone*, 41 ECAB 354, 357 (1989).

Rationalized medical opinion evidence is medical evidence that is based on a complete factual and medical background, of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested, and the medical rationale expressed in support of the physician's opinion.⁷

ANALYSIS

Appellant has alleged that she sustained an injury in the performance of duty on January 15, 2013. A proper analysis of the issue, as discussed above, is to first determine whether the evidence establishes an employment incident. If the details of an employment incident are established, then the medical evidence is reviewed to determine if a diagnosed condition is causally related to the employment incident.

In the present case, OWCP decisions do not properly analyze the issues presented in this case. Although it reviewed some of the medical evidence, at the same time OWCP indicated that it had not accepted that an employment incident occurred, but the evidence of record clearly indicated that an employment incident occurred on January 15, 2013.

Appellant alleged in her initial statement dated January 15, 2013 that she had picked up a tray of mail, began dropping it and both she and the mail fell to the ground. In later statements she alleged that she did not fall, but stumbled backward. Appellant's supervisor was a witness to the incident and reported that appellant did not pick up a tray of mail, but it was handed to appellant and the supervisor never let go of the tray. The supervisor indicated that the tray slowly went to the ground and appellant then backed away. She provided a detailed description of the January 15, 2013 incident.

The proper analysis requires a finding as to the specific details of the January 15, 2013 employment incident. If OWCP accepts the supervisor's version of the incident based on the evidence of record, then it should make such a finding. Once the determination is made as to the incident, then the medical evidence should properly be reviewed to determine if there was an accurate history and a probative medical opinion on causal relationship. In this case, OWCP asserted that it was not accepting the factual component of fact of injury, but then reviewed some, but not all, of the medical evidence. As to the medical evidence reviewed, it did not make proper findings. The findings with respect to Dr. Berkowitz' November 20, 2013 report, for example, were inconsistent and not properly explained. OWCP appeared to find that it was sufficient to require further development as it raised an uncontroverted inference of causal relationship,⁸ and then found that the opinion was not sufficient on causal relationship.

⁷ *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

⁸ It is well established that, when an uncontroverted inference of causal relationship is raised, OWCP is obligated to further develop the medical evidence. *Supra* note 6 at 354.

It is a well-established principle that OWCP must make proper findings of fact and a statement of reasons in its final decisions.⁹ The case will be remanded to OWCP for a proper review of the evidence and findings on the issue presented. After such further development as may be deemed necessary, OWCP should issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision and will be remanded to OWCP.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated July 22, 2015 is set aside and the case remanded for further action consistent with this decision of the Board.

Issued: December 21, 2015
Washington, DC

Christopher J. Godfrey, 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

⁹ See *Arietta K. Cooper*, 5 ECAB 11 (1952); 20 C.F.R. § 10.126.