

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

J.V., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cape Coral, FL, Employer**

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**Docket No. 15-1942
Issued: March 8, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 29, 2015 appellant filed a timely appeal from two August 25, 2015 merit decisions 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.²

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an injury causally related to a June 29, 2015 employment incident; and (2) whether appellant has established that she was entitled to continuation of pay.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence after OWCP rendered its August 25, 2015 decisions. The Board's jurisdiction is limited to reviewing the evidence that was before OWCP at the time of its final decision. Therefore, this additional evidence cannot be considered by the Board. 20 C.F.R. § 510.2(c)(1). Appellant may submit this evidence to OWCP, together with a written request for reconsideration, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606(b)(2).

FACTUAL HISTORY

On July 7, 2015 appellant, then a 32-year-old rural carrier associate filed a traumatic injury claim (Form CA-1) alleging that she sustained an injury in the performance of duty. She alleged that on June 29, 2015 a motor vehicle crash caused neck, back, right shoulder, elbow, and knee injuries. Appellant stopped work on June 30, 2015. On the reverse side of the claim form the employing establishment controverted the claim, stating that she was injured while on her way home from work, and it was unclear whether she went straight home or not.

On June 29, 2015 appellant received treatment from, Dr. Warren Oliver, a Board-certified osteopath specializing in emergency medicine. Dr. Oliver assessed myofascial cervical strain and myofascial lumbar sprain.

An undated accident report from the employing establishment advised that appellant was driving home from work when she was hit from behind by another driver as she was about to turn into her driveway. The report noted that she was driving her own vehicle to deliver mail and contacted her supervisor to report the accident and inform him that she would not be in to work. It noted that appellant did not report that it was work related, but she was advised by a union steward to file a claim as he believed it was work related. Other accident reports advised that she was involved in a motor vehicle accident at 5:30 p.m. on her way home from work.

In a July 7, 2015 statement, appellant advised that she left work at 4:30 p.m. and drove home when she was rear-ended by a vehicle as she was about to enter her driveway. She noted that she was transported to the emergency room.

By letter dated July 24, 2015, OWCP advised appellant that the employing establishment controverted the claim contending that she was sent out to another route while at work. It informed her of the type of evidence needed to establish the claim and afforded her 30 days from the date of the letter to submit responsive evidence.

An OWCP nurse report advised that appellant was off work due to undergoing physical therapy. It indicated that she was using her own insurance as the accident occurred on her way home.

By decision dated August 25, 2015, OWCP found that the work incident occurred as alleged, but denied the claim because the evidence of record was insufficient to establish that a medical condition was diagnosed in connection with the claimed event.

By separate decision dated August 25, 2015, OWCP denied appellant's request for continuation of pay, because her traumatic injury claim was denied.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking compensation under FECA has the burden to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,³

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

including that he or she is an “employee” within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.⁴ 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.⁵

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 medical evidence to establish that the employment incident caused a personal injury.⁶

Rationalized medical opinion evidence is generally required to establish causal relationship. 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.⁷

ANALYSIS -- ISSUE 1

There is no dispute that on June 29, 2015 appellant was involved in a motor vehicle accident. Therefore, the Board finds that the first component of fact of injury, the incident, is established. However, the medical evidence of record is insufficient to establish that the employment incident on June 29, 2015 caused or aggravated appellant’s diagnosed condition.

In Dr. Oliver’s June 29, 2015 report he diagnosed myofascial cervical strain and myofascial lumbar sprain. This report is not sufficient to discharge appellant’s burden of proof as it does not provide the history of the injury or an opinion as to the cause of appellant’s condition. The Board has long held that a report without an opinion as to causal relationship is of little probative value.⁸

There is no other medical evidence of record received prior to OWCP’s August 25, 2015 decision. Therefore, appellant has submitted insufficient evidence to support her claim. As explained, the medical evidence is insufficient to establish the claim as she has not provided a physician’s report explaining how the July 28, 2014 incident caused her diagnosed conditions. Causal relationship is a medical question that must be established by probative medical opinion from a physician.⁹ The physician must accurately describe appellant’s work duties and

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁸ *See Jaja K. Asaramo*, 55 ECAB 200 (2004) (medical evidence that does not offer an opinion regarding the cause of an employee’s condition is of limited probative value on the issue of causal relationship).

⁹ *Y.J.*, Docket No. 08-1167 (issued October 7, 2008).

medically explain the pathophysiological process by which these duties would have caused or aggravated her condition.¹⁰ Because appellant has not provided such medical opinion evidence in this case, she has failed to meet her burden of proof.

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.

LEGAL PRECEDENT -- ISSUE 2

Section 8118(a) of FECA authorizes continuation of pay, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title. This latter section provides that written notice of injury shall be given within 30 days. The context of section 8122 makes clear that this means within 30 days of the injury.

OWCP regulations provide, in pertinent part that to be eligible for continuation of pay, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination or treatment; (2) file a Form CA-1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.

The employee must provide a written report on a Form CA-1 to the employing establishment within 30 days of the injury. OWCP's procedures state that another OWCP-approved form, such as CA-2, CA-2a, or CA-7 forms, which contain the words of the claim can be used to satisfy timely filing requirements.

The Board has held that section 8122(d)(3) of FECA, which allows OWCP to excuse failure to comply with the time limitation provision for filing a claim for compensation because of exceptional circumstances, is not applicable to section 8118(a), which sets forth the filing requirements for continuation of pay. Thus there is no provision in the law for excusing an employee's failure to file a claim within 30 days of the employment injury.

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied appellant's claim for continuation of pay. 20 C.F.R. § 10.205(1) provides that to be eligible for continuation of pay, a person must have a traumatic injury which is job related and the cause of the disability or the cause of lost time due to the need for medical examination and treatment. Here, the traumatic injury claim has been

¹⁰ *Solomon Polen*, 51 ECAB 341 (2000) (rationalized medical evidence must relate specific employment factors identified by the claimant to the claimant's condition, with stated reasons by a physician). *See also S.T.*, Docket No. 11-237 (issued September 9, 2011).

denied. Since there is no traumatic injury, there is no employment-related disability. Consequently, appellant is not eligible for continuation of pay.¹¹

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury causally related to a June 29, 2015 employment incident. The Board further finds that OWCP properly denied her claim for continuation of pay.

ORDER

IT IS HEREBY ORDERED THAT the August 25, 2015 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: March 8, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

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

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

¹¹ See *J.O.*, Docket No. 12-267 (issued June 11, 2012).