

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

J.D., Appellant)	
)	
and)	Docket No. 24-0166
)	Issued: May 16, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Selma, AL, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

JURISDICTION

On December 11, 2023 appellant filed a timely appeal from August 31 and September 8, 2023 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

ISSUE

The issue is whether appellant has met her burden of proof to establish a diagnosed medical condition in connection with the accepted March 24, 2022 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 8, 2023 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On February 14, 2023 appellant, then a 53-year-old rural carrier associate, filed a traumatic injury (Form CA-1) alleging that on March 24, 2022 she sustained degenerative disc disease in the form of arthritis of the neck, a pinched nerve at C6-7, and discomfort in her left lower back when she twisted to retrieve mail and her middle finger got stuck while in the performance of duty. The employing establishment indicated that she had returned to work on March 25, 2022.

In an attending physician's report (Form CA-20) dated March 24, 2022, Dr. Bruce E. Taylor, who specializes in family and internal medicine, provided a history of appellant experiencing a pop in her right shoulder on December 21, 2021. He diagnosed cervical radiculitis and a right shoulder sprain.

Appellant underwent x-rays of the lumbar and cervical spine on April 25, 2022. A magnetic resonance imaging (MRI) scan of the cervical spine, obtained on June 30, 2022, demonstrated mild central stenosis at C5-6 secondary to mild diffuse disc osteophyte complex.

In a development letter dated February 27, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a March 8, 2023 response, appellant related that her injury occurred when she was twisting and bending forward retrieving mail from trays and tubs. She experienced discomfort in her left lower back and shoulder and an aggravation of a degenerative neck condition.

By decision dated April 7, 2023, OWCP accepted that the March 24, 2022 work incident occurred as alleged, but denied the claim as the medical evidence of record did not contain a medical diagnosis in connection with the accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In a report dated May 3, 2023, Dr. Taylor described appellant's complaints of neck pain exacerbated by an injury at work on March 24, 2022³ when her middle finger got stuck in mail while she lifted packages and twisted. He noted that an MRI scan demonstrated worsening neck issues due to the accepted employment injury and explained that she had central stenosis at C5-6 secondary to a diffuse osteophyte complex which was aggravated by the work injury. Dr. Taylor diagnosed cervical radiculitis and brachial neuritis or radiculitis not otherwise specified. He indicated that appellant had also experienced low back pain due to the accepted employment injury, and that x-rays showed a back sprain. Appellant's name is written by hand on the top of the report. Dr. Taylor noted that she was a 53-year-old woman.

On July 7, 2023 appellant requested reconsideration.

³ Dr. Taylor noted the year as 2023; however, this appears to be a typographical error as the case record supports that he was referencing the accepted March 24, 2022 employment injury.

In a work status report dated August 15, 2023, Dr. Gomez Gilberto, an osteopath, diagnosed lumbar spondylosis and advised that appellant should remain on light duty with restrictions.

By decision dated August 31, 2023, OWCP denied modification of its April 7, 2023 decision.

On August 31, 2023 appellant requested reconsideration.

By decision dated September 8, 2023, OWCP denied modification of its August 31, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish 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,⁵ that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

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.⁸ Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged.⁹ The second component is whether employment incident caused an injury.¹⁰

⁴ *Supra* note 1.

⁵ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

⁷ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

⁹ *J.V.*, Docket No. 21-0029 (issued April 15, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

¹⁰ *Id.*

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.¹¹ The opinion of the physician must be based on a complete factual and medical background of the employee, 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 employment incident identified by the employee.¹²

ANALYSIS

The Board finds that appellant has met her burden of proof to establish diagnoses of cervical radiculitis, right shoulder sprain, and brachial neuritis or radiculitis not otherwise specified in connection with the accepted March 24, 2022 employment incident.

In a March 24, 2022 Form CA-20, Dr. Taylor provided a history of appellant experiencing a pop in her right shoulder on December 21, 2021 and diagnosed cervical radiculitis and a right shoulder sprain. On May 3, 2023 he related her history of injury and diagnosed cervical radiculitis and brachial neuritis or radiculitis not otherwise specified. Dr. Taylor also noted that appellant had low back pain due to the March 24, 2023 work injury and that x-rays obtained on April 25, 2023 showed a back sprain. The Board, therefore, finds that the evidence of record establishes diagnoses in connection with the accepted March 24, 2022 employment incident.¹³

As the medical evidence of record establishes diagnosed medical conditions, the case must be remanded for consideration of the medical evidence regarding the issue of causal relationship.¹⁴ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish diagnoses of cervical radiculitis, right shoulder sprain, and brachial neuritis or radiculitis not otherwise specified in connection with the accepted March 24, 2022 employment incident.

¹¹ *H.A.*, Docket No. 24-0004 (issued January 26, 2024); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *Robert G. Morris*, 48 ECAB 238 (1996).

¹² *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

¹³ *See B.W.*, Docket No. 23-0932 (issued November 27, 2023); *M.H.*, Docket No. 23-0189 (issued March 17, 2023); *S.A.*, Docket No. 20-1498 (issued March 11, 2021).

¹⁴ *See C.M.*, Docket No. 23-1037 (issued December 6, 2023); *C.O.*, Docket No. 23-0678 (issued September 28, 2023); *R.C.*, Docket No. 22-1099 (issued December 28, 2022).

ORDER

IT IS HEREBY ORDERED THAT the August 31 and September 8, 2023 decisions of the Office of Workers' Compensation Programs are reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 16, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board