

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

E.S., Appellant)	
)	
and)	Docket No. 22-1339
)	Issued: May 16, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Coppell, TX, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 12, 2022 appellant filed a timely appeal from an April 28, 2022 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.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on February 16, 2022, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 28, 2022 decision, OWCP received additional evidence. 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 March 20, 2022 appellant, then a 52-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2022 between 1:30 and 2:30 a.m. she was standing in front of a box when a forklift driver hit the box, pushing it into her abdomen and knocked the air out of her while in the performance of duty. She related that she developed internal bleeding in her abdomen, which required surgical intervention. On the reverse side of the claim form an employing establishment supervisor, A.S., acknowledged that appellant was injured in the performance of duty. However, A.S. controverted the claim, asserting that there were no witnesses to the incident, appellant continued to work for three days without complications, and that the condition for which she underwent surgery was due to a known, preexisting condition. Appellant stopped work on February 20, 2022.

In a March 28, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a factual questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted a February 23, 2022 discharge summary from Dr. Joseph Amos, a Board-certified general surgeon, noting that she was admitted on February 20, 2022 and reported being hit by a heavy box in the abdomen while at work, three days prior to her admission. She related that her condition progressively worsened and caused abdominal pain which acutely worsened on the day prior to admission. Appellant was admitted for an exploratory laparotomy, during which a ruptured large right ovarian mass was found to be the source of her abdominal bleeding. Dr. Amos diagnosed hemoperitoneum and performed a right Salpingo-oophorectomy.

In a March 11, 2022 progress note, Dr. Brandon Roane, a Board-certified gynecologic oncologist, noted that appellant reported that, a few days prior to her surgery, a forklift knocked a box into her abdomen at work. Appellant related that she did not feel pain immediately but started to experience pain a few days later. Dr. Roane noted that, after appellant's surgery for intraabdominal hemorrhage and ruptured ovarian mass, final pathology results revealed a granulosa cell tumor. He related that, a year prior, appellant was informed that she had a right ovarian mass/cyst that was being monitored by her gynecologist. Dr. Roane diagnosed a right ovary and right fallopian tube Salpingo-oophorectomy and a fragmented granulosa cell tumor with extensive necrosis. He further noted that a computerized tomography (CT) scan of her abdomen and pelvis indicated a large hemorrhagic mass and/or hematoma within the central mesentery, with hyperdense blush of contrast asymmetric on the right, concerning for active hemorrhage, and superimposed hemoperitoneum with moderate hyperdense free fluid along the paracolic gutters and pelvis.

In March 21, 2022 postoperative notes, Dr. Jenna Seawright, an obstetrician and gynecologist, diagnosed a malignant neoplasm of unspecified ovary and indicated that she performed a robotic-assisted laparoscopic total hysterectomy, exploratory laparotomy, total abdominal hysterectomy, small bowel resection, omentectomy, and left Salpingo-oophorectomy. In a March 24, 2022 progress note, she noted that appellant was recovering appropriately.

By decision dated April 28, 2022, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the incident occurred as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

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. The first component is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on the employee's statements in determining whether a *prima facie* case has been established.⁸ An employee's statement

³ *Supra* note 1.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.⁹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on February 16, 2022, as alleged.

In her March 20, 2022 Form CA-1, appellant alleged that on February 16, 2022 she experienced internal abdominal bleeding requiring surgery when a forklift struck a box that impacted her abdomen while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that she was injured in the performance of duty. Although the employing establishment controverted the claim, arguing that appellant did not report the incident immediately, it has not provided strong or persuasive evidence to refute the occurrence of the February 16, 2022 employment incident. As noted, an employee's statement alleging that an injury occurred at a given time and place, and in a given manner, is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰

Further, the medical evidence contemporaneous with the alleged employment incident establishes that just a few days after the incident appellant sought treatment on February 20, 2022. Appellant reported to Dr. Amos that she was hit by a heavy box in the abdomen while at work three days prior and explained that her condition progressively worsened and caused abdominal pain which acutely worsened on the day prior to admission. On March 11, 2022 she related to Dr. Roane that a forklift knocked a box into her abdomen at work and she did not feel pain immediately, but started to experience pain a few days later. There are no inconsistencies in the evidence that cast serious doubt upon the validity of the claim, thus, the Board finds that appellant has established a traumatic incident in the performance of duty on February 16, 2022, as alleged.

As appellant has established that an incident occurred in the performance of duty on February 16, 2022 as alleged, the question becomes whether the accepted incident caused an injury.¹¹ As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.¹² After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted February 16, 2022 employment incident.

⁹ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁰ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); see also *M.C.*, *id.*; *D.B.*, *id.*

¹¹ *D.F.*, *id.*; *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹² *D.F.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, *supra* note 8.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on February 16, 2022, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2022 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 16, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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