

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

_____)	
T.C., Appellant)	
)	
and)	Docket No. 22-1365
)	Issued: May 11, 2023
U.S. POSTAL SERVICE, VINCENNES ROAD)	
POST OFFICE, Indianapolis, IN, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On September 22, 2022 appellant filed a timely appeal from a July 7, 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, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 7, 2022 decision, OWCP received additional evidence and appellant submitted additional evidence on appeal. 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 March 29, 2022 appellant, then a 59-year-old sales and service distribution associate, filed a traumatic injury claim (Form CA-1) alleging that she sustained injuries to her back and both legs when she tripped on a pallet jack on March 9, 2022, and when she pushed an all-purpose container (APC) with a broken wheel on March 10, 2022, while in the performance of duty. The employing establishment acknowledged that she was injured in the performance of duty.³

In a March 16, 2022 narrative statement, appellant related that on Wednesday, March 9, 2022, she tripped on a pallet jack and “tweaked” her back. She noted that she had a little pain. However, appellant related that on Thursday, March 10, 2022 she pushed an APC with a broken wheel and her back started hurting again. She noted that she called off work on Saturday, Monday, and Tuesday for back pain and when she returned to work on Wednesday, March 16, 2022 her back pain increased.

OWCP received a work release form dated March 16, 2022, from Dr. Kerstin U. Dostal, Board-certified in emergency medicine, who indicated that appellant was seen at the emergency department on that date and could return to work on March 19, 2022.

A March 16, 2022 lumbar spine x-ray read by Dr. John Gustaitis, Board-certified in diagnostic radiology and nuclear medicine, revealed narrowing of the L5-S1 disc space and no acute pathology.

OWCP received several medical records from Dr. Saveen Kondamuri, an interventional pain medicine specialist and Board-certified anesthesiologist. These records included a March 23, 2022 duty status report (Form CA-17) which noted that appellant tripped on a pallet jack on March 12, 2016 and pushed a full APC with a broken wheel on March 13, 2016; Part B, an attending physician’s report, of a March 30, 2022 authorization for examination and/or treatment (Form CA-16), which noted that on March 12, 2022 appellant tripped on a pallet jack; and an April 26, 2022 work status report. In a progress report dated April 26, 2022, Dr. Kondamuri noted that appellant’s back pain began on March 9, 2022 after she tripped at work. He related appellant’s diagnoses as lumbar disc herniation with radiculopathy and spinal stenosis of the lumbar region with neurogenic claudication.

In a May 19, 2022 development letter, OWCP advised appellant of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. It afforded her 30 days to provide the necessary evidence. OWCP also notified the employing establishment that if appellant was treated at an agency medical facility, they must provide the treatment notes. Appellant did not provide a response to the questionnaire.

OWCP received several medical records from Dr. Yasir Fashih, a Board-certified internist, dated March 23, and April 13, 2022. In the March 23, 2022 report, Dr. Fashih noted that on March 16, 2022 appellant presented at the emergency department complaining of lower and mid

³ The record reflects that appellant has a traumatic injury claim for a July 29, 2021 injury which OWCP accepted, under OWCP File No. xxxxxx808, for strain of muscle, fascia, and tendon at neck level, initial encounter; and strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, left arm, initial encounter.

back pain and that appellant related that she “tripped at work on Wednesday and has since been having her back pain.” In the April 13, 2022 report, he related that appellant was seen for lumbar pain, which was a recurrent problem. Dr. Fashih also indicated that the current episode began more than one month ago.

In a May 26, 2022 progress note, Dr. Kondamuri opined that appellant’s new pain in the left leg began after the March 9, 2022 work incident and opined that it “likely represents a new injury at the L4-5 and L5-S1 levels.”

OWCP also received physical therapy reports dated from June 7 to 16, 2022.

By decision dated July 7, 2022, OWCP denied appellant’s traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred, as alleged. It concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

A claimant seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

To determine if an employee sustained a traumatic 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 that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged.⁸ The second component is whether the employment incident caused a personal injury.⁹

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, but the employee’s statements must

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ *See A.L.*, Docket No. 21-1375 (issued December 16, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *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).

⁷ *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).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

be consistent with the surrounding facts and circumstances and his or her subsequent course of action.¹⁰ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon 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 an employee's statements in determining whether a *prima facie* case has been established.¹¹ An employee's statements 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.¹²

ANALYSIS

The Board finds that this case is not in posture for decision.

The Board notes that on her Form CA-1 appellant alleged that, while in the performance of duty, on March 9, 2022, she tripped on a pallet jack and on March 10, 2022 she pushed an APC with a broken wheel. Appellant repeated these allegations regarding her history of injury in her March 16, 2022 statement. While OWCP found that she had not established fact of injury because her statements were vague, the Board notes that appellant's statements are consistent and uncontroverted. The supervisor acknowledged that appellant was injured in the performance of duty. 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.¹³ The Board finds that appellant has established that the events occurred as alleged.¹⁴

As appellant has established the events as alleged, the question becomes whether the events caused an injury.¹⁵ As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's July 7, 2022 decision and remand the case for consideration of the medical evidence.¹⁶

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹² *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *A.W.*, Docket No. 21-0686 (issued April 5, 2022); *N.A.*, Docket No. 21-0773 (issued December 28, 2021); *L.Y.*, Docket No. 21-0221 (issued June 30, 2021); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁴ While Dr. Dr. Kondamuri initially reported that the alleged events occurred on March 12 and 13, 2022. He subsequently corrected his history of injury.

¹⁵ *M.H.*, Docket No. 20-0576 (issued August 6, 2020); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁶ *Id.*; *see also S.M.*, Docket No. 16-0875 (issued December 12, 2017).

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 employment events.¹⁷

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the events occurred as alleged. The Board further finds that the case is not in posture for decision regarding whether she has established an injury causally related to the accepted employment events.

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: May 11, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. *See* 20 C.F.R. § 10.5(ee). An occupational disease, however, is defined as a condition produced by the work environment over a period longer than a single workday or shift. *See* 20 C.F.R. § 10.5(q). To the extent that appellant is alleging an occupational disease claim, she may file a Form CA-2 with OWCP.