

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

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**Q.D., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Merrifield, VA, Employer**

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**Docket No. 14-1468  
Issued: December 23, 2014**

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
PATRICIA HOWARD FITZGERALD, Judge

**JURISDICTION**

On June 16, 2014 appellant filed a timely appeal from a May 16, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 met his burden of proof to establish that he sustained a traumatic injury in the performance of duty.

**FACTUAL HISTORY**

On January 13, 2014 appellant, then a 41-year-old truck driver and equipment handler filed a traumatic injury claim alleging that he sustained a right arm injury. He claimed that on January 9, 2014 he sustained an injury while lifting a hamper full of steel and metal and dumping

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

it in a dumpster. Appellant began a light-duty schedule. The employing establishment first received notice of the claimed injury on January 14, 2014.

In a January 13, 2014 medical report, a physician's assistant diagnosed elbow pain. Appellant was restricted to lifting, pushing, and pulling no more than 10 pounds. A January 13, 2014 duty status report (Form CA-17) reiterated these work restrictions. In another January 13, 2014 report, the physician's assistant noted that appellant related that he felt pain "immediately" when he injured his elbow lifting a hamper filled with metal. He diagnosed right elbow sprain/strain.

In a January 13, 2014 statement, appellant's coworker, William Brooks, noted that he and appellant were instructed to unload a hamper filled with metal scraps into a dumpster. Mr. Brooks advised that the hamper, which weighed approximately 400 pounds, was extremely heavy and awkward to handle. As he and appellant lifted the hamper to reach the dumpster it flipped. Mr. Brooks let go of the hamper while appellant continued to hold onto it. He stated, "I believe if there is any point in which an injury would have happened it would have been at this point in time." Mr. Brooks added, "when it happened I witnessed [appellant] moving his shoulder and arm as if to stretch them out but he did not say to me he was hurt although it could have come in time from a pulled muscle."

In a January 16, 2014 report, Dr. Sam Marco, a family medicine practitioner, stated that appellant was in for a recheck of a right elbow injury incurred on January 9, 2014. He noted findings and diagnosed right elbow sprain/strain and lateral epicondylitis. Dr. Marco advised that right arm x-rays were negative. He also noted that appellant should limit lifting, pulling, and pushing to no more than 10 pounds and to refrain from commercial driving. Dr. Marco advised that appellant has right elbow decreased active range of motion with external rotation and active abduction and decreased grip on the right. In a January 21, 2014 status report, he noted that appellant was seen for the January 9, 2014 injury, and advised that he had improved active range of motion with external rotation and active abduction. Dr. Marco diagnosed lateral epicondylitis and right elbow sprain/strain. Duty status reports of January 16 and 21, 2014 reiterated his work restrictions. In a January 28, 2014 report, Dr. Marco related the same diagnosis and history as noted in his earlier reports. In a January 28, 2014 duty status report, appellant's work restrictions changed to lifting no more than 15 pounds and pushing and pulling no more than 20 pounds.

On January 29, 2014 appellant accepted a modified assignment offer.

Within a duty status report of February 4, 2014, Dr. Marco advised that appellant was able to return to his regular work schedule without limitations. In a February 11, 2014 report, he repeated appellant's history and diagnoses, released him to regular duty, and indicated that his conditions had resolved. Appellant also provided multiple physical therapy reports.

By letter dated April 4, 2014, OWCP notified appellant that his claim was initially administratively handled to allow medical payments, as his claim appeared to involve a minor injury resulting in minimal or no lost time from work. However, it advised that it was now considering the merits of his claim. Appellant was advised that evidence was insufficient to establish his claim. OWCP asked him to submit a response to a questionnaire in order to substantiate the factual basis of his claim and a medical report from his attending physician

including a diagnosis, history of the injury, and a physician's opinion on causal relationship supported by medical rationale. It specifically asked appellant to state the immediate effects of the injury and what he did immediately thereafter. OWCP also asked him to explain why he did not seek medical treatment until January 13, 2014, for the claimed January 9, 2014, injury.<sup>2</sup>

OWCP received resubmissions of previously submitted medical evidence.

In a May 16, 2014 decision, OWCP denied appellant's claim because he did not establish the factual component of his case. It also advised that he failed to submit medical evidence establishing causal relationship between the work incident and a medical condition.

### **LEGAL PRECEDENT**

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,<sup>3</sup> 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.<sup>4</sup> The employee must also establish that he sustained an injury in the performance of duty as alleged and that his disability for work, if any, was causally related to the employment injury.<sup>5</sup>

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 he 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.<sup>6</sup>

An employee's statement 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.<sup>7</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his or her burden in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to

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<sup>2</sup> OWCP initially sent this letter on February 25, 2014 but it was returned as undeliverable. On April 4, 2014 it resent this letter to appellant's correct address.

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

<sup>4</sup> *R.C.*, 59 ECAB 427 (2008).

<sup>5</sup> *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

<sup>6</sup> *T.H.*, 59 ECAB 388 (2008).

<sup>7</sup> *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>8</sup>

### ANALYSIS

Appellant alleged that on January 9, 2014 he injured his right arm on the job while lifting a hamper filled with metal. OWCP denied his claim because evidence did not establish that the claimed incident occurred as alleged. The Board finds that OWCP properly determined that the factual evidence is insufficient to establish that the January 9, 2014 employment incident occurred at the time, place, and in the manner alleged.

Appellant claimed that his injury occurred on January 9, 2014 but he did not seek medical treatment, inform his employer of the injury, or file his claim until January 13, 2014, four days after the alleged injury. Appellant submitted a January 13, 2013 statement from his coworker, Mr. Brooks, who corroborates that appellant was lifting a hamper filled with metal on January 9, 2014. Mr. Brooks stated that, after lifting the hamper, he witnessed appellant moving his shoulder and arm as to stretch them out, but he specifically stated that appellant "did not say to me he was hurt." This is in contrast to the history that appellant provided to a physician's assistant on January 13, 2014 that appellant felt pain "immediately" upon lifting a hamper. Mr. Brooks' statement does not make any mention of appellant expressing that he was in immediate pain. Furthermore, on April 4, 2014, OWCP sent appellant a development letter requesting that he state the immediate effects of the claimed injury and that he explain why he waited four days to receive medical treatment. Appellant did not respond. The inconsistency between Mr. Brooks' statement and the history that appellant related to the physician's assistant, together with appellant's failure to state the immediate effects of the claimed injury and explain why he waited four days to receive medical treatment cast doubt on appellant's statement that he sustained an injury as alleged on January 9, 2014. The Board finds that appellant has not established the occurrence of the January 9, 2014 work incident as alleged and therefore has not met his burden of proof to establish that he sustained an employment-related injury on January 9, 2014.<sup>9</sup>

On appeal, appellant states that the claimed injury occurred while he was on duty. However, as explained, he has not submitted sufficient evidence to establish his claim.

### CONCLUSION

The Board finds that appellant did not establish that he sustained a traumatic injury in the performance of duty on January 9, 2014.

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<sup>8</sup> *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> As appellant did not meet his burden to establish the occurrence of an employment incident, it is not necessary to consider the medical evidence with regards to causal relationship. See *Bonnie A. Contreras*, 57 ECAB 364 (2006).

**ORDER**

**IT IS HEREBY ORDERED THAT** the May 16, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 23, 2014  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge  
Employees' Compensation Appeals Board