

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

J.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Trenton, NJ, Employer**

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**Docket No. 14-1740
Issued: December 11, 2014**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 12, 2014 appellant filed a timely appeal from a July 17, 2014 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.

ISSUE

The issue is whether appellant met her burden of proof to establish an injury in the performance of duty.

FACTUAL HISTORY

On June 9, 2014 appellant, then a 55-year-old mail handler, filed a CA-1 traumatic injury claim alleging that on June 5, 2014 at 10:15 p.m. while working on casters she hurt her right lower back. The employing establishment controverted the claim. It noted that the day before, appellant was informed that her Family Medical Leave Act (FMLA) was being exceeded and she would need documentation. The next day, appellant alleged that she had a pinched nerve in her

¹ 5 U.S.C. § 8101 *et seq.*

back so she could not work the unloader and, hours later, she claimed an injury. No evidence was submitted with the claim.

By letter dated June 11, 2014, OWCP advised appellant that the evidence of record was insufficient to support her claim as there was no evidence to establish that she actually experienced the incident or employment factor alleged to have caused injury and no diagnosis of any condition resulting from her injury had been provided. Appellant was advised that additional medical and factual evidence was needed, which included a statement describing how she was injured and an explanation of the delay in reporting her injury and filing a claim. She was afforded 30 days to respond.

In an updated CA-1 claim form dated June 18, 2014, appellant indicated that on June 5, 2014 at 10:15 p.m., she was working in the “FSS” area pulling casters in and out and she felt intense pain on the right side of her lower back.

In a July 3, 2014 statement, appellant stated on June 5, 2014 that she was pulling loaded casters in and out of the “ITC” area and felt pain in her lower back. The pain in her lower back was followed by limping. Appellant reported the injury to her supervisor and was told that she had to go to the local hospital instead of her “home” hospital. She lives an hour away from her job and decided to wait to see if the pain would increase or decrease.

In a June 10, 2014 emergency room report, Dr. Gregory Neyman, the emergency room physician, noted that appellant works for the employing establishment and pulls mail constantly. He related that on Thursday, June 5, 2014 appellant developed right-sided lower rib pain in the front with stretching. Dr. Neyman noted that the mechanism of injury was from pulling mail at work with a sudden onset of symptoms. There had been no change in appellant’s symptoms since that time and she tried nothing for relief of symptoms. Dr. Neyman presented examination findings and results of x-rays. Rib strain and muscle strain were diagnosed.

Progress reports from the Robert Wood Johnson University Hospital at Hamilton Occupational Health dated June 10, 19, and July 2, 2014 were received. The history of injury was noted as occurring on June 5, 2014 during appellant’s workday of pushing and pulling casters, when she felt a dull ache in the right side and lower back. Diagnoses of lumbar spine sprain and thoracic spine pain were provided.

A July 2, 2014 prescription for physical therapy from Dr. Vincent E. Pierce, Jr., Board-certified in emergency medicine, was received with an authorization request for physical therapy for right lumbar and a July 15, 2014 physical therapy report.

By decision dated July 17, 2014, OWCP denied appellant’s claim on the grounds that fact of injury had not been established. It found there was insufficient evidence to establish that the event occurred as alleged while appellant delayed reporting the injury because she was told to go to a local hospital instead of her “home hospital,” she did not explain why she waited four days to file a claim and five days to seek medical care.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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; 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 are causally related to the employment injury.² 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.³

In order to determine whether an employee actually sustained an 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, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁴ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he sustained an injury in the performance of duty he must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged. He or she must also establish that such event, incident or exposure caused an injury.⁵ Once an employee establishes that he or she sustained an injury in the performance of duty, he or she has the burden of proof to establish that any subsequent medical condition or disability for work, for which he or she claims compensation is causally related to the accepted injury.⁶

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 subsequent course of action. In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁷

ANALYSIS

OWCP determined that appellant failed to submit sufficient evidence to establish that she experienced the employment incident at the time, place, and in the manner alleged. It indicated that, while appellant delayed reporting the injury because she was told to go to a local hospital instead of her "home hospital," she did not explain why she waited four days to file a claim and five days to seek medical care.

² *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143, 1154 (1989).

³ *Michael E. Smith*, 50 ECAB 313 (1999).

⁴ *Elaine Pendleton*, *supra* note 2 at 1143 (1989).

⁵ *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989).

⁶ *See Elaine Pendleton*, *supra* note 2.

⁷ *Betty J. Smith*, 54 ECAB 174 (2002).

The Board finds, however, that there is sufficient evidence of record from which to conclude that an employment incident occurred as appellant alleged during her shift on June 5, 2014. Appellant noted on the CA-1 form that the injury occurred on June 5, 2014 at 10:15 p.m. In her July 3, 2014 statement, she indicated that when she told her supervisor on June 5, 2014 about her injury she was told to go to the local hospital instead of her “home” hospital. Appellant explained that she lives an hour away from her job and that she waited to see if the pain would increase or decrease. She then filed the claim on June 9, 2014 and the next day, June 10, 2014, went to the local hospital and occupational health unit. The emergency room report noted that there had been no change in appellant’s symptoms since June 5, 2014 and that she tried nothing for relief.

Although appellant did not file the claim form until June 9, 2014, the Board finds that her actions are consistent with an injury occurring during the evening of June 5, 2014. She timely reported the injury to her supervisor on June 5, 2014, a Thursday evening, and decided to see how the pain progressed before going to the local hospital near work, as instructed by her supervisor. When the pain remained after a few days, which encompassed the weekend, she filed a claim during her shift Monday evening and went to the local hospital and occupational health the next day. Since appellant’s statement regarding an incident is given great weight⁸ and in the absence of probative evidence refuting the incident as alleged, the Board finds that appellant has established an employment incident during her scheduled work shift on June 5, 2014.⁹

The next question is whether this incident caused an injury.¹⁰ Both the June 10, 2014 emergency room report and the June 10, 2014 occupational health unit report provide a consistent history of injury as occurring on June 5, 2014 during appellant’s workday of pushing and pulling mail/casters. Dr. Neyman, the emergency room physician, related that on Thursday appellant developed right-sided lower rib pain in the front with stretching and that the mechanism of injury was from pulling mail at work. He diagnosed rib strain and muscle strain. The reports from the Robert Wood Johnson University Hospital at Hamilton Occupational Health note that appellant felt right side and lower back pain on June 5, 2014 during her workday of pushing and pulling casters. A diagnosis of lumbar spine sprain and thoracic spine pain were provided.

The medical reports of record, the emergency room report from Dr. Neyman and the reports from the Robert Wood Johnson University Hospital at Hamilton Occupational Health are supportive of appellant’s claim that the incident of June 5, 2014 caused an injury. However, because OWCP denied her claim on the grounds that she did not establish fact of injury, it never reviewed the evidence to determine whether the medical evidence submitted in support of her claim was sufficient to establish causal relationship. The Board will therefore set aside OWCP’s

⁸ *Thelma Rogers*, 42 ECAB 866 (1991).

⁹ In this case, the employing establishment did not dispute that the claimed incident occurred; rather it asserted she claimed an injury a day after being informed her FMLA coverage was exceeded.

¹⁰ A traumatic injury means a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

July 17, 2014 decision and remand the case to OWCP for a review of the medical evidence.¹¹ OWCP shall make a finding on whether the medical opinion evidence is sufficient to establish that the June 5, 2014 work incident caused appellant's diagnosed conditions and shall issue an appropriate final decision on her entitlement to compensation.

CONCLUSION

The Board finds that this case is not in posture for decision. The weight of the factual evidence established that the incident occurred as alleged. OWCP must now determine whether the medical opinion evidence establishes that this incident caused an injury.

ORDER

IT IS HEREBY ORDERED THAT the July 17, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: December 11, 2014
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹¹ Due to the disposition of this case, appellant's arguments on appeal will not be addressed.