

performance of duty. She was lifting a patient to place him in the overhead lift for a shower. The employing establishment checked the box “yes” in response to whether their knowledge of the facts agreed with the statements of the employee and/or witnesses. It was noted that on April 1, 2014 the employing establishment received a telephone call from appellant informing that “she had a slip for light duty because she had hurt her arm. When questioned, [appellant] stated that she did not know how or when she had hurt her arm.”

In an April 1, 2014 report, Dr. Anthony R. Russo, Board-certified in family medicine noted that appellant complained of constant sharp pains in her left shoulder for a few days. He related that appellant believed the pain was “related to moving a patient wrong,” and that it radiated down her left arm and was worse with movement. Dr. Russo diagnosed left shoulder pain.

By letter dated June 12, 2014, OWCP advised appellant that additional factual and medical evidence was needed. It noted that a rotator cuff tear was a significant injury and she was asked to explain why she did not immediately report it to her supervisor. OWCP allotted appellant 30 days to submit the requested information.

In a memorandum of telephone call dated June 13, 2014, appellant notified OWCP that the patient was on the gurney and she was trying to put his pajama top on and she put her shoulder underneath him and pulled her shoulder. She indicated that she went to “Sentera Minor emergency” afterwards and that she did not report the injury because it happened at four a.m. and her supervisor was not there.

In a June 17, 2014 statement, appellant explained that her shift started at 4:00 a.m. and ended at 12:30 p.m. She indicated her injury occurred at 5:00 a.m. on March 27, 2014. Appellant noted that on that date there were no nurse care managers on the floor. She explained that the other nurses were busy doing medications and nursing notes for the overnight shift. Appellant stated that she had mentioned her injury to a coworker. She explained that she was caring for a patient during his bowel care and shower that morning. While the patient was on the gurney, appellant was preparing him to return to bed when she tried to lift his shoulder and held it up with hers, so she could pull his pajama shirt down under his back. She explained that this was how he wanted it to be done. Appellant noted that his right shoulder slipped off her left shoulder and her shoulder went back. She explained that she heard a “pop” and she believed that she had just pulled a muscle and felt it would work itself out, so she continued to work the rest of her shift. However, when appellant went home, her shoulder was sore. It continued to bother her as she worked on March 28 and 29, 2014. Appellant was not scheduled to work on March 30, 2014, so she took it easy and rested her shoulder. She explained that she returned to work on March 31, 2014 and it was still hurting. Appellant’s manager was not there on Monday and appellant did not see her to report it to her. Appellant explained that by Tuesday morning, April 1, 2014, her shoulder hurt such that she went to the Sentra Miner Emergency Clinic and called the employing establishment to let them know that she could not come in to work. She confirmed that she had no prior history of injury to her shoulder.

In a separate statement also dated June 17, 2014, appellant’s husband provided a statement in which he indicated that appellant came home from work on March 27, 2014 and informed him that she hurt her left shoulder at work. Additionally, he noted there was no one

there to whom to report the incident. Appellant's husband reiterated appellant's description of the incident and the events subsequent to the incident.

By decision dated August 1, 2014,² OWCP denied appellant's claim on the grounds that she did not establish an injury as alleged. It found that the evidence did not demonstrate that a specific event, incident or exposure occurred at the time, place, and in the manner alleged.³

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 timely filed within the applicable time limitation period of FECA⁴ and that an injury was sustained in the performance of duty.⁵ These are the essential elements of each 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 the fact of injury has been established. There are two components involved in establishing the fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ In some traumatic injury cases, this component can be established by an employee's uncontroverted statement on the Form CA-1.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁹

An alleged work incident does not have to be confirmed by eyewitnesses in order to establish that an employee sustained an injury in the performance of duty, but the employee's statement must be consistent with the surrounding facts and circumstances and the subsequent course of action.¹⁰ A consistent history of the injury as reported on medical reports to the claimant's supervisor and on the notice of injury can also be evidence of the occurrence of the

² OWCP also issued a July 30, 2014 decision which appears to have been superceded by the August 1, 2014 decision.

³ OWCP initially dated the decision July 30, 2014; however, it reissued the decision on August 1, 2014.

⁴ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *Julie B. Hawkins*, 38 ECAB 393, 396 (1987).

⁸ *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *See id.* For a definition of the term "injury," *see* 20 C.F.R. § 10.5(ee).

¹⁰ *Rex A. Lenk*, 35 ECAB 253, 255 (1983).

incident.¹¹ 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹² Although an employee's statement 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,¹³ an employee has not met this burden when there are inconsistencies in the evidence such as to cast serious doubt upon the validity of the claim.¹⁴

ANALYSIS

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

The Board finds that the evidence is sufficient to establish that appellant experienced the March 27, 2014 work incident at the time, place, and in the manner alleged. Appellant explained that her shift started at 4:00 a.m. and ended at 12:30 p.m. Additionally, she stated her injury occurred at 5:00 a.m. on March 27, 2014. Appellant alleged that on that date, there were no nurse care managers on the floor and that other nurses were busy doing medications and nursing notes for the overnight shift, although she mentioned her injury to a coworker. Furthermore, she explained in great detail how the incident occurred. Appellant was caring for a patient during his bowel care and shower that morning. As the patient was on the gurney, she was preparing him to return to bed when she tried to lift his shoulder and held it up with hers, so she could pull his pajama shirt down under his back, as this was how he wanted it to be done. Appellant explained that his right shoulder slipped off her left shoulder and her shoulder went back. She heard a "pop" and she believed that she had just pulled a muscle and felt that it would work itself out, so she continued to work the rest of her shift. However, when appellant went home, her shoulder was sore. It continued to bother her as she worked on March 28 and 29, 2014. Appellant was not scheduled to work on March 30, 2014, so she rested her shoulder. She explained that she returned to work on March 31, 2014 and it was still hurting but her manager was not there and she did not see her to talk to her. Appellant explained that by Tuesday morning, April 1, 2014, her shoulder hurt such that she went to an emergency clinic and called the employing establishment to let them know that she could not come in to work.

The Board notes that appellant filed her traumatic injury claim and sought medical treatment within four days of the incident. Appellant also explained that her late notification was because no one was there on the date of the incident, that she continued to work, and that she also tried rest. Additionally, she noted that on March 31, 2014 her manager was not present. The Board notes that the report from Dr. Russo dated April 1, 2014 also contains a history related to an injury due to moving a patient. Appellant provided a sufficiently consistent history

¹¹ *Id.* at 255-56.

¹² *Dorothy M. Kelsey*, 32 ECAB 998 (1981).

¹³ *Id.*

¹⁴ *Joseph A. Fournier*, 35 ECAB 1175 (1984).

of injury to her physicians and to OWCP. An employee's statement 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 and persuasive evidence.¹⁵ Not only is there no strong evidence contradicting appellant's statement regarding how the incident occurred, there is considerable evidence supporting her statement. The Board also notes that the employing establishment checked the box "yes" in response to whether their knowledge of the facts agreed with the statements of the employee and/or witnesses. Although the employing establishment noted that "when questioned, employee stated that she did not know how or when she had hurt her arm," the Board finds that this statement is not supported by the record as appellant has explained exactly how her injury occurred. The record also contains a statement from appellant's husband, who corroborated appellant's account. This statement is of more limited value because of appellant's husband's obvious interest in having his spouse's claim accepted. The employing establishment did not provide any other information to suggest that the incident did not occur. Under the circumstances of this case, the Board finds that appellant's allegations have not been refuted by strong or persuasive evidence and that there are no inconsistencies which are sufficient to cast serious doubt on her version of the employment incident.¹⁶ Consequently, appellant has established the occurrence of the March 27, 2014 work incident.

As OWCP denied appellant's claim for failure to establish the occurrence of an employment incident on March 27, 2014, it had not considered the medical evidence with regard to establishing causal relationship. The case will be remanded to OWCP for evaluation of the medical evidence to determine whether she sustained a medical condition and disability due to the accepted March 27, 2014 work incident. After such further development as it deems necessary, it should issue an appropriate decision.

CONCLUSION

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

¹⁵ See *Allen C. Hundley*, 53 ECAB 551 (2002).

¹⁶ See *M.H.*, 59 ECAB 461 (2008).

ORDER

IT IS HEREBY ORDERED THAT the August 1, 2014 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further action consistent with this opinion.

Issued: February 24, 2015
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