

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

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**R.I., Appellant**

**and**

**U.S. POST OFFICE, POST OFFICE,  
San Antonio, TX, Employer**

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**Docket No. 15-1205  
Issued: February 9, 2016**

*Appearances:*  
*Brett E. Blumstein, Esq., for the appellant*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
COLLEEN DUFFY KIKO, Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 4, 2015 appellant, through counsel, filed a timely appeal from a January 6, 2015 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 the case.

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a left shoulder injury causally related to a March 30, 2013 employment incident.

**FACTUAL HISTORY**

On March 30, 2013 appellant, then a 46-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1), alleging that on the same day between 2:00 a.m. and 2:30 a.m. his supervisor Stephanie Page assigned him to a mail handler job where he was dumping mail from

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

mail sacks. He alleged that while dumping mail he felt a pinch pain in his left shoulder. Appellant noted that there were no witnesses. Appellant's supervisor noted that the employing establishment was still investigating the alleged accident and controverted the claim. Appellant did not stop work at that time.

Appellant submitted an undated statement and related that he had been dumping a sack onto a conveyor belt and felt a pinch to his left upper shoulder. He noted that he did not think much of the pinch in the left shoulder until he went home and it began to hurt.

Appellant was treated by Dr. James Murray, a Board-certified family practitioner, from March 30 to April 5, 2013 for a left shoulder injury. In duty status reports dated March 30 and April 5, 2013, Dr. Murray diagnosed left shoulder strain and impingement and returned appellant to work on March 30, 2013 subject to restrictions. In a work status report form dated March 30, 2013, he noted treating appellant for a "WRI Left Shoulder U.S. Postal Service" which occurred on March 30, 2013. Dr. Murray diagnosed left shoulder strain/impingement. An April 2, 2013 magnetic resonance imaging (MRI) scan of the left shoulder revealed linear tearing of the anterior and superior segments of the labrum, findings consistent with impingement syndrome with partial-thickness tearing of the supraspinatus and subscapularis tendons.

Appellant was treated by Dr. Helo Chen, an osteopath, on April 10, 2013 for left shoulder pain reportedly incurred from a traumatic work accident. He reported that on March 30, 2013, while at work, he was unloading mail from sacks weighing approximately 30 pounds and while lifting a sack he felt a sudden pinch in his left shoulder. Dr. Chen noted that appellant presented in mild acute distress, with tenderness on palpation, and had decreased range of motion. He opined that the effects of the work injury persisted and limited appellant's activities. Dr. Chen diagnosed left shoulder impingement and left shoulder superior glenoid labrum lesion causally related to the traumatic work injury of March 30, 2013. Appellant reported unloading mail from sacks, which weighed 30 to 40 pounds and while lifting a sack he felt a sudden pinch in his left shoulder. Dr. Chen opined that the March 30, 2013 accident directly resulted in his diagnosed conditions of left shoulder impingement and left shoulder superior glenoid labrum lesion. He noted that appellant had residuals of the work-related injury.

In a statement dated March 31, 2013, Ms. Page, appellant's tour 1 supervisor, provided an accident report noting that on March 30, 2013 she instructed appellant to load mail onto belts and indicated that she would be sending four workers to assist at 1:00 a.m. She stated that he loaded belts until she stopped the machine at 1:55 a.m. Ms. Page reported that appellant and two other clerks stood by the front of the machine talking and she dismissed appellant for lunch at 2:20 a.m. Appellant returned to the manual belt and worked until 3:50 a.m. without incident and the next day informed the tour three supervisors that he hurt himself the day before loading belts between 2:00 a.m. and 2:30 a.m. Ms. Page controverted his claim.

By letter dated April 10, 2013, OWCP advised appellant of the type of factual and medical evidence needed to establish his claim. It indicated that the evidence was insufficient to establish that he experienced the incident or employment factor alleged to have caused the injury. OWCP specifically requested that appellant substantiate the factual elements of his claim and respond to a questionnaire regarding how his injury occurred.

In an April 2, 2013 statement, appellant claimed that on March 30, 2013 between 2:00 a.m. and 2:30 a.m., Ms. Page had assigned him mail handler duties and while dumping mail from the sacks he felt a pinch in his left shoulder. Appellant continued to work, but the next morning he felt a sharp pain in his left shoulder. That afternoon he reported his injury to his supervisor.

Appellant submitted a March 30, 2013 report from Dr. Murray who had treated appellant for a left shoulder injury. He reported that while at work he felt a small pinch in his left shoulder when dumping mail. Appellant noted tenderness on palpation over the lateral aspect of the left shoulder and a limited range of motion. Dr. Murray diagnosed left shoulder strain and impingement. In duty status reports dated April 2 and 23, 2013, he diagnosed left shoulder injury and returned appellant to work subject to restrictions.

In a decision dated May 13, 2013, OWCP denied appellant's claim as the evidence did not support that the injury or events occurred as alleged.

On May 24, 2013 appellant requested reconsideration. In a statement dated May 23, 2013, he noted filing a (Form CA-1) on March 30, 2013 and then notifying his supervisor of his injury. Appellant reported that his injury occurred when he was lifting and dumping mail weighing approximately 30 pounds from the sacks to the belt and after a few minutes Ms. Page sent two more clerks to assist. He stated that he followed his supervisor's instructions because he did not want to be insubordinate. Appellant noted that during the course of dumping mail from the sacks he felt a left shoulder pinch. He did not report the injury to his supervisor as he thought it was minor and continued to work until 2:30 a.m. The following morning appellant felt a sharp and throbbing pain in his left shoulder and reported his injury.

Appellant underwent an EMG on May 7, 2013 which revealed no abnormalities. In a June 6, 2013 report, Dr. Chen referred to his April 10, 2013 report to explain how appellant had sustained a work-related injury in the performance of duty.

In a decision dated July 19, 2013, OWCP denied modification of the May 13, 2013 decision.

On July 24, 2013 appellant requested reconsideration. He submitted time and attendance reports from April 27 to 30, 2013. On July 30, 2013 Dr. Jackie Stephenson, a general practitioner and Board-certified urologist, treated appellant for a left shoulder injury. Appellant reported dumping mail at work and feeling pain in the left shoulder. Dr. Stephenson noted a left shoulder MRI scan showed linear tearing of the anterior and superior segments of the labrum, impingement syndrome with partial-thickness tearing of the supraspinatus, and subscapularis tendons.

A September 12, 2013 report from Dr. Chen reiterated that he believed appellant had a work-related injury. He provided a history of injury and opined that the repetitious movements of lifting and dumping a significant amount of weight while keeping pace with a conveyor belt caused strain to the shoulders, exhausting the supporting muscles, and increasing risk of injury. Dr. Chen diagnosed left shoulder impingement syndrome and left shoulder superior glenoid labrum lesion. He opined that both conditions were caused by forceful lifting and repetitive

overhead activities which included lifting and dumping 30-pound sacks of mail onto a moving conveyor belt.

Appellant submitted September 10, 2013 witness statements from Emilio Lopez and Patrick McColley, coworkers, who noted that they were working with appellant dumping mail on the day he claimed his injury occurred.

In a decision dated December 16, 2013, OWCP denied modification of the prior decision.

On February 24, 2014 appellant requested reconsideration. He submitted two new identical witness statements from Mr. Lopez and Mr. McColley providing more specifically that “[Appellant] was working on March 30, 2013 at 2:00 a.m. to 2:30 a.m., on Saturday March 20, 2013.”

Appellant submitted a March 25, 2014 report from Dr. Chen who noted that appellant had sustained a work-related injury while in the performance of his work duties. He advised that appellant’s treatment could not move forward unless the claim was accepted by OWCP.

The employing establishment submitted an April 14, 2014 statement from Gaye R. Gresham, manager, Health and Resource Management, who controverted appellant’s claim. The employing establishment submitted time and attendance records of both Mr. Lopez and Mr. McColley for March 30, 2013. Ms. Gresham indicated that the employing establishment contends that appellant’s claim lacked a factual basis and should remain denied.

In a decision dated July 17, 2014, OWCP denied modification of the prior decision.

On October 13, 2014 appellant requested reconsideration. He submitted a declaration dated October 10, 2014 and explained that the reason he noted on the CA-1 form that there were no witnesses to his injury was that he did not believe that he would be able to get the witnesses to testify that they had seen anything for fear of retribution. Appellant further noted that he was not dismissed for lunch at 2:20 a.m. with his coworkers as he took his lunch at midnight and the two coworkers were witnesses that he kept working until 2:30 a.m. when they went to lunch.

The employing establishment submitted an October 29, 2014 statement from Sharon Faust, health resource management specialist. Ms. Faust asserted that the claim should remain denied.

In a decision dated January 6, 2015, OWCP denied modification of the prior decision.

### **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 of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the

employment injury. 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.<sup>2</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 and place and in the manner alleged. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.<sup>3</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>4</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 her subsequent course of action. An employee has not met 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 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>5</sup>

### ANALYSIS

OWCP denied appellant's claim finding that he failed to establish that the events occurred as alleged. It is undisputed that appellant's duties as a mail processing clerk involved dumping mail from mailbags which involved the use of his left shoulder. Appellant consistently alleged he was injured on March 30, 2013 "at about 2:00 am -- 2:30 am." There is no dispute that appellant was dumping mail from mailbags during the work shift that he alleges an injury. While there are alleged inconsistencies about when the incident occurred, appellant nonetheless alleged his injury at a time which was within 10 minutes of a time when his supervisor confirms he was performing his assigned work duties. Statement from Mr. Lopez and Mr. McColley also support that appellant was dumping mail at the time in question.

Additionally, the history of the work incident was confirmed by contemporaneous medical reports. The Board notes that appellant reported the injury on the following day and immediately sought medical treatment for a diagnosed left shoulder condition and provided his medical care providers with a consistent history of injury. In a work status report form dated March 30, 2013, Dr. Murray treated appellant for a "WRI Left Shoulder U.S. Postal Service" which occurred on March 30, 2013. Dr. Murray diagnosed left shoulder strain/impingement. Similarly, on April 10, 2013 Dr. Chen noted appellant reported that on March 30, 2013, while at

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<sup>2</sup> Gary J. Watling, 52 ECAB 357 (2001).

<sup>3</sup> T.H., 59 ECAB 388 (2008).

<sup>4</sup> R.T., Docket No. 08-408 (issued December 16, 2008); Gregory J. Reser, 57 ECAB 277 (2005).

<sup>5</sup> Betty J. Smith, 54 ECAB 174 (2002).

work, he was unloading mail from sacks weighing approximately 30 pounds and while lifting a sack he felt a sudden pinch in his left shoulder. The Board finds that the evidence is consistent that on March 30, 2013 appellant was performing his work duties as a mail processing clerk which included dumping mail as alleged.

**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 evidence establishes that the incident caused an injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 6, 2015 decision of the Office of Workers' Compensation Programs is modified in part and remanded for further action consistent with this decision.<sup>6</sup>

Issued: February 9, 2016  
Washington, DC

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

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

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<sup>6</sup> James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.