

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

J.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Zachary, LA, Employer**

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**Docket No. 15-1964
Issued: May 12, 2016**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

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

JURISDICTION

On September 30, 2015 appellant filed a timely appeal of a September 3, 2015 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 met her burden of proof to establish a traumatic injury in the performance of duty on July 14, 2015.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 3, 2015 decision, OWCP received additional evidence. However, the Board may only review evidence that was in the record at the time OWCP issued its final decision. *See* 20 C.F.R. § 501.2(c)(1); *M.B.*, Docket No. 09-176 (issued September 23, 2009); *J.T.*, 59 ECAB 293 (2008); *G.G.*, 58 ECAB 389 (2007); *Donald R. Gervasi*, 57 ECAB 281 (2005); *Rosemary A. Kayes*, 54 ECAB 373 (2003).

FACTUAL HISTORY

On July 20, 2015 appellant, then a 37-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on July 14, 2015 she sustained a right wrist sprain as the result of the postmaster twisting her wrist in the parking lot of the employing establishment. The employing establishment controverted the claim and noted that appellant stopped work on July 20, 2015.

On July 23, 2015 OWCP received a notice of management inquiry which had been conducted by a Mr. Brengarter, a postmaster from another employing establishment facility. This inquiry had been conducted on July 20, 2105 which included statements and interviews as set forth below. Mr. Brengarter stated that there were no witnesses to the actual alleged incident between appellant and her postmaster. He further related that the witnesses who were interviewed did not support appellant's version of events leading to the alleged incident and found inconsistencies between appellant's written statement and her interview responses.

In her undated statement, her July 14, 2015 witness statement and her July 20, 2015 supplemental statement, appellant related her version of the July 14, 2015 incident with the postmaster. She related that she had been at the hospital emergency room the prior night with her son, and by the time she began to deliver the Zachary Post mail she had been awake 30 to 32 hours. Appellant stated that upon returning to the employing establishment she was met by her postmaster who verbally attacked her for not delivering the Zachary Post mail. Her fiancé called her and appellant took the call at which point the postmaster demanded that she hang up the telephone. Appellant claimed that she went outside to smoke and had her lighter in her hand. While standing near her vehicle, she was grabbed on her right hand from behind by her postmaster as she began to light her cigarette. Appellant alleged that her postmaster yelled at her, telling her that it was not a smoke break. She stated that she then telephoned David Spencer, a union representative, and asked what she was to do. Appellant claimed that he told her to follow her postmaster's instructions. She stated that she did not wince in pain when her postmaster grabbed her right hand while she was on the telephone with Mr. Spencer. Appellant also stated that she did not tell Mr. Spencer that the postmaster grabbed her hand at the time nor did she tell the postmaster that her wrist hurt. She stated that, after finishing casing the Zachary Post mail, her fiancé and son came to take her home. Appellant alleged that she felt bullied and intimidated by her postmaster and that she was crying and emotional. She stated that she was afraid of her postmaster and did not want to be around her. Appellant alleged that her fiancé heard the postmaster screaming at her while she was on the cell phone with him. She related that she contacted the police and went to a doctor who told her to contact the police.

In his statement, appellant's fiancé alleged that he overheard the postmaster asking appellant why she did not resign; he then told appellant to call the union.

In a statement and initial interview report dated July 18, 2015, Lyla C. Turner, a sales service associate, related conversations she overheard between appellant and her postmaster. She described the conversation in which appellant stated to her postmaster that she needed to get off early because her son was ill and that a coworker had agreed to deliver part of the Zachary Post on her route. Ms. Turner claimed that her postmaster's response was that she was appellant's supervisor and had instructed appellant to case her Zachary Post. Next, she noted

that appellant began to talk on her cell phone and the postmaster instructed her get off the telephone to do the Zachary Post. Appellant ignored her postmaster's instructions, hung up the telephone, and then took a break to see how her son was doing at the time. Ms. Turner stated that appellant was loud and argumentative with her postmaster. Ms. Turner, in the initial interview report, stated that she had witnessed appellant being disrespectful to her postmaster and refusing to follow instructions. She further stated that appellant was loud and out of control and that the postmaster had always been professional, calm, reasonable, fair, and had always treated everyone the same.

Lea George, a supervisor, in her statement and her initial interview report dated July 18, 2015, noted that early in the morning on July 14, 2015 appellant was on the telephone with her postmaster to request the day off because she was tired from visiting her son at the hospital. She heard the postmaster state that since they were shorthanded she could not give appellant the day off, but that her route should not take too long. She noted that appellant advised that she had contacted another carrier who agreed to help her. The postmaster observed that appellant had not loaded all of the Zachary Post into her truck. The postmaster called later that day to tell Ms. George that appellant had only delivered half the Zachary Post. Ms. George, in her initial interview report, noted that the postmaster was frustrated by the employee's failure to follow instructions, and that appellant was disrespectful, loud, and complained about other employees.

The record contains statements dated July 18 and 22, 2015 and July 20, 2015 continuation of interview form from appellant's postmaster disputing appellant's allegations that the postmaster had touched, grabbed, or twisted appellant's wrist or hand. She provided her version of what happened. The postmaster noted that appellant called her about getting the day off because her son was in the emergency room, but later called to say that she would be in later to case mail. The postmaster noted that when appellant came in she refused to take her Zachary Post to be delivered and became argumentative. The postmaster asked why appellant did not deliver the Zachary Post. She told appellant that her performance was unacceptable and that she could not leave until the Zachary Posts were cased. As she began to explain the seriousness of the situation to appellant, appellant got on her cell phone and ignored the postmaster. Appellant ignored multiple requests to hang up the cell phone. When appellant ended that call, she declared that she needed to go outside to make a telephone call. Appellant then went outside, made the call, but ignored the postmaster who asked her to hang up the cell phone. The postmaster went outside and explained that appellant had two choices. Appellant at this point ended her telephone conversation and began to light a cigarette. The postmaster told her to put the cigarette and lighter down and go inside to case mail. They both walked back and entered the employing establishment. At no point did the postmaster notice any injury nor did appellant complain or inform the postmaster about a right wrist injury.

In a July 20, 2015 interview statement, Alfred Bates, a truck driver, related that he noticed appellant and the postmaster leaving the building *via* the dock and could hear them talking. They both returned to the building after four to five minutes. At no point did Mr. Bates witness any aggressive behavior by the postmaster toward appellant, but sensed tension between the two.

In an interview witness statement form dated July 20, 2015, Mr. Spencer, a rural carrier, related that appellant's boyfriend had come to his house that night stating that appellant wanted

to sue the postmaster for taking a lighter from appellant's hand. He noted that when appellant had called him from work that day to ask him about being forced to work, that he advised her that he was not a union steward at that time. Mr. Spencer stated that he could hear the postmaster telling appellant to get off the phone in the background. In the continuation sheet, he related both appellant and the postmaster were loud and that the postmaster sounded frustrated. Mr. Spencer noted that he did not hear anything that sounded like her postmaster grabbing appellant's hand while talking to him.

In a July 20, 2015 witness interview statement form, Ms. Turner, the sales associate, noted that appellant had been arguing, throwing mail around, and appeared angry. She, in a continuation sheet, noted that the postmaster was not screaming.

In a July 21, 2015 witness interview statement form, Jailynn Taylor, also a sales service associate, stated that both appellant and the postmaster were a bit loud during the incident in question, but there was no screaming.

By letter dated July 27, 2015, OWCP informed appellant that the evidence of record was insufficient to establish her claim. Appellant was advised as to the medical and factual evidence required and afforded her 30 days to provide such information.

In response to OWCP's July 27, 2015 letter, the following medical evidence was received.

In a July 16, 2015 report, Rebecca A. Davis, a certified family nurse practitioner, noted that appellant was seen that day for complaints of right wrist pain for the past one to three days. Appellant related that her supervisor grabbed and twisted her wrist to prevent her from lighting her cigarette. The nurse observed that appellant had a wrist splint from a prior emergency room visit. A physical examination of the right wrist revealed decreased range of motion, edema, and tenderness on palpation.

In a July 16, 2015 disability note, Ms. Davis diagnosed right wrist pain and indicated that appellant was disabled from working.

A July 22, 2015 duty status report (Form CA-17), indicated that appellant was disabled from performing her date-of-injury job.³ Diagnoses included sprained right wrist and noted that the injury occurred when appellant's wrist was grabbed and twisted by her manager.

On August 18, 2015 appellant submitted her responses to questions posed by OWCP. She noted that, while outside, on break she went to grab a cigarette from the door of her truck. At that time appellant was still on her cell phone with Mr. Spencer. She alleged that the postmaster approached from behind her and grabbed and twisted her right hand. Appellant felt a sharp pain from her wrist to elbow. The swelling began overnight and she went to the hospital the next day.

³ The signature on the form is illegible.

By decision dated September 3, 2015, OWCP denied appellant's claim as she had failed to establish that the claimed incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish 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 and/or specific condition for which compensation is claimed are causally related to the employment injury.⁵ 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.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁷ 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.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

To establish that an incident occurred as alleged, the incident need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and her subsequent course of action.¹⁰ 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 doubt on an employee's statements.¹¹ However, an employee's statement regarding the occurrence of an employment incident is of great probative force and will stand unless refuted by strong or persuasive evidence.¹²

⁴ 5 U.S.C. § 8101 *et seq.*

⁵ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁶ S.P., 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ B.F., Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 5.

⁸ D.B., 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ C.B., Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 5.

¹⁰ See *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *Linda S. Christian*, 46 ECAB 598 (1995).

¹² *Gregory J. Reser*, 57 ECAB 277 (2005).

Appellant must establish all of the elements of her claim in order to prevail. She must prove the time, place, and manner of the alleged incident, and a resulting personal injury.¹³

ANALYSIS

In its September 3, 2015 decision, OWCP found that appellant had not established that the incident occurred at the time, place, and in the manner alleged. The Board finds that appellant has failed to establish a traumatic injury in the performance of duty on July 14, 2015. Appellant's presentation of the facts is not supported by the evidence of record and does not establish her allegation that a specific event occurred in the performance of duty which caused an injury on the date in question.¹⁴

In statements dated July 18, 20, and 22, 2015, the postmaster denied appellant's allegations that she had touched, grabbed, or twisted appellant's wrist or hand. The postmaster related that when appellant arrived at work she became argumentative and refused to take her Zachary Post mail to be delivered. Appellant got on her cell phone and ignored the postmaster's multiple requests to get off the cell phone. When she went outside she ended her second telephone call, and began to light a cigarette. The postmaster told appellant to put the cigarette and lighter down and go inside to case mail. They both walked back and entered the employing establishment. At no point did the postmaster notice any injury nor did appellant complain or inform the postmaster about a right wrist injury.

In addition the record contains statements and interviews with coworkers, Ms. Turner, Ms. George, Mr. Bates, and Ms. Taylor, who all support the postmaster's version of events. The witnesses all deny seeing the postmaster grab and twist appellant's wrist and deny that the postmaster screamed at appellant after following her outside. Mr. Spencer did not witness the incident, but was on the phone with appellant and could hear the postmaster in the background asking appellant to get off the phone. He stated that the postmaster sounded frustrated. Mr. Spencer denied hearing anything that sounded like the postmaster grabbing appellant's hand.

As appellant has failed to submit corroborating witness statements to substantiate these allegations, this casts doubt on her assertion that she sustained an employment-related injury on July 14, 2015.

While an incident need not be witnessed by eyewitnesses to establish that the event occurred, given the inconsistencies which exist in the evidence including the witness statements which contradict appellant's description of the incident, there is serious doubt as to whether the specific incident occurred at the time, place, and in the manner alleged. The Board finds that she has failed to meet her burden of proof to establish fact of injury. Because appellant has not

¹³ See *C.C.*, Docket No. 15-1866 (December 11, 2015).

¹⁴ *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997).

established that the July 14, 2015 incident occurred as alleged, it is unnecessary for the Board to consider the medical evidence.¹⁵

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not submitted sufficient evidence to establish a right wrist sprain in the performance of duty on July 14, 2015 as she failed to establish that the incident occurred as alleged

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 3, 2015 is affirmed.

Issued: May 12, 2016
Washington, DC

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

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

¹⁵ *B.W.*, Docket No. 13-244 (issued May 13, 2013); *S.P.*, 59 ECAB 184 (2007); *Bonnie A. Contreras*, *supra* note 5; *Paul Foster*, 56 ECAB 208 (2004).