

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

S.C., Appellant)	
)	
and)	Docket No. 16-1842
)	Issued: July 14, 2017
U.S. POSTAL SERVICE, POST OFFICE,)	
Athens, GA, Employer)	
)	

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On September 15, 2016 appellant filed a timely appeal from a June 17, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant timely requested oral argument pursuant to section 501.5(b) of Board procedures. 20 C.F.R. § 501.5(b). By order dated May 23, 2017, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on a review of the case record. *Order Denying Request for Oral Argument*, Docket No. 16-1842 (issued May 23, 2017). (rd5/23/17, docket file)

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that appellant submitted evidence with her appeal to the Board. The Board cannot consider this evidence as its jurisdiction is limited to the evidence that was before OWCP at the time it issued its final decision. 20 C.F.R. § 501.2(c)(1); *P.W.*, Docket No. 12-1262 (issued December 5, 2012).

ISSUE

The issue is whether appellant met her burden of proof to establish an employment-related injury on October 20, 2014.

On appeal appellant asserts that her supervisor made false statements regarding the circumstances of her claimed injury.

FACTUAL HISTORY

On October 27, 2014 appellant, then a 41-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that at 10:00 a.m. on October 20, 2014, after lifting heavy trays several times, her right shoulder and neck burned, and she felt numbness down to her hand. A supervisor, G.M., signed the claim form on October 27, 2014. He noted that appellant gave conflicting stories regarding the claimed injury. G.M. related that on Monday or Tuesday of the previous week appellant had related that she would be going to the doctor for her shoulder. Appellant also stated that she had car trouble and could not get to work. The supervisor noted that appellant came into work on October 27, 2014 requesting light duty and, when told this was not available, asked for a CA-1. G.M. related that appellant verbally indicated that her shoulder injury occurred by throwing heavy packages and on the claim form indicated that it was caused by lifting heavy mail trays. He did not recall appellant previously mentioning a shoulder injury.

Subsequently, in an attached handwritten statement, appellant indicated that on Saturday, October 18, 2014 pain started when she lifted a tray of mail and, by the end of the day, her hand was swelling. She related that on Monday, October 20, 2014 she related to a “Ms. R.” that she had to go to the doctor because her arm hurt, and that on October 22, 2014 she had a right shoulder scan.

Dr. Alvin T. Wilson, an osteopath, advised on October 27, 2014 that appellant could not work. An October 29, 2014 form report of an orthopedic physician’s assistant, indicated that appellant had been seen that day and could return to restricted duty.

By letter dated November 4, 2014, OWCP informed appellant of the evidence needed to establish her claim.

Dr. John Manfredi, a Board-certified orthopedic surgeon, completed an attending physician’s report (Form CA-20) on November 12, 2014. He diagnosed right rotator cuff tear and checked a form box marked “no,” advising that the condition was not caused by employment activity. Dr. Manfredi determined that appellant could not work beginning October 18, 2014.⁴

In correspondence dated November 14, 2014, the employing establishment controverted the claim.

⁴ Appellant also submitted a physical therapy prescription signed by Dr. Alonzo T. Sexton, a Board-certified orthopedic surgeon and an associate of Dr. Manfredi, along with a list of discharge medications.

By decision dated December 9, 2014, OWCP denied the claim. It accepted the work incident, but found the medical evidence insufficient to establish a medical condition due to this incident.

On July 24, 2015 appellant, through his counsel at that time, requested reconsideration. Counsel indicated that the claimed injury occurred on October 18, 2014 when appellant was lifting heavy mail trays weighing 50 to 60 pounds. He asserted that the medical evidence supported causal relationship and submitted additional medical evidence.

In an undated handwritten timeline, appellant indicated that on October 18, 2014 due to pain in her right shoulder, she dropped a tray of mail while working. She further noted that on October 22, 2014 she had visited the doctor and had a magnetic resonance imaging (MRI) scan of the shoulder, that on October 23, 2014 she had gone to an emergency room for arm pain and numbness, that on October 29, 2014 she had seen an orthopedist for torn rotator cuff which was shown on MRI scan, that the employing establishment had refused her request for light-duty work, and that on November 6, 2014 she had right shoulder surgery with follow-up appointments through January 30, 2015.

An October 22, 2014 MRI scan of the right shoulder demonstrated an old injury versus changes due to repetitive motion in the acromioclavicular joint, and a partial thickness tear of the rotator cuff.

In correspondence dated February 27, 2015, Dr. Sexton noted that appellant was initially seen on October 29, 2014 for a rotator cuff tear after an employment injury on October 18, 2014 when she lifted a tray weighing 50 to 60 pounds and felt an immediate sharp pain. He related that she had surgical repair of the tear on November 6, 2014. Dr. Sexton advised that appellant had continued restrictions on lifting and overhead activities and needed continued physical therapy and rehabilitation.

In a September 15, 2015 merit decision, OWCP again denied appellant's claim. It noted that she claimed that the injury occurred on October 18, 2014 yet on the claim form she wrote that it occurred on October 20, 2014. OWCP further found the medical evidence of record insufficient to establish causal relationship, noting that Dr. Manfredi indicated, before the surgery, that the diagnosed rotator cuff tear was not employment related, and that Dr. Sexton's February 27, 2015 report was completed after her November 2014 surgery.

Appellant, through counsel, again requested reconsideration on March 18, 2016. In a handwritten new patient history dated October 29, 2014, she related that she had symptoms of right shoulder, neck, and hand and constant burning, numbness, and tingling that had occurred for one to two weeks since an October 18, 2014 injury. Appellant submitted a copy of the November 6, 2014 operative notes and reports dated November 9, 2014 to April 24, 2015 in which physician assistants described her right shoulder care. On May 22, 2015 Dr. Sexton reported that appellant's shoulder was no longer causing problems and advised that she could return to full duty with no restrictions.

In correspondence dated December 29, 2015, Dr. Sexton noted that appellant was first seen in their clinic on October 29, 2014 and provided a history that suggested an injury to her

shoulder on October 18, 2014 at work. Appellant reported that, when lifting a mail tray that weighed 50 to 60 pounds, she felt a sharp immediate pain in her shoulder and, when seen 11 days after the injury, complained of continued shoulder pain and weakness. Dr. Sexton described the MRI scan findings, subsequent to surgery, and follow-up care. He related that on one follow-up visit appellant was seen by a Mr. Joslyn, but was never seen by Dr. Manfredi. Dr. Sexton concluded that, based on his clinical examination as well as the history provided by appellant, he believed that appellant's rotator cuff tear was due to the injury she sustained at work on October 18 2014. He advised that, considering the acute nature of appellant's pain symptoms, the objective findings on the MRI scan, and subsequent surgery, appellant's injury was work related. Dr. Sexton opined that Dr. Manfredi's comments were based on incomplete information and were not related to his own clinical examination of the patient.

By letter dated April 15, 2016, the employing establishment contended that, due to appellant's conflicting stories as to how her injury occurred, the claim should be denied.

In a merit decision dated June 17, 2016, OWCP modified that prior decision to indicate that, because the facts of the claim were in question, the claim was denied because appellant had not established that she experienced the employment incident at the time, place, and in the manner alleged.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of reliable, probative, and substantial evidence,⁵ including that he or she is an "employee" within the meaning of FECA and that he or she filed a claim within the applicable time limitation.⁶ The employee must also establish an injury occurred in the performance of duty as alleged and that disability for work, if any, was causally related to the employment injury.⁷

OWCP regulations at 20 C.F.R. § 10.5(ee) define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents within a single workday or shift.⁸ To determine whether an employee sustained a traumatic injury in the performance of duty, OWCP must determine whether "fact of injury" has been established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed. An employee may establish that the employment incident occurred as alleged, but fail to show that his or her

⁵ *J.P.*, 59 ECAB 178 (2007).

⁶ *R.C.*, 59 ECAB 427 (2008).

⁷ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁸ 20 C.F.R. § 10.5(ee); *Ellen L. Noble*, 55 ECAB 530 (2004).

disability and/or condition relates to the employment incident.⁹ It is the employee's burden to establish that her injury occurred at the time, place, and in the manner alleged.¹⁰

OWCP cannot accept fact of injury if there are such inconsistencies in the evidence as to seriously question whether the specific event or incident occurred at the time, place, and in the manner alleged, or whether the alleged injury was in the performance of duty,¹¹ and OWCP cannot find fact of injury if the evidence fails to establish that the employee sustained an "injury" within the meaning of FECA. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and her subsequent course of action.¹²

ANALYSIS

The Board finds that appellant has not established fact of injury because of inconsistencies in the evidence that cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged. Appellant did not establish that on either October 18 or October 20, 2014 she injured her right shoulder while performing employment duties.

On her claim form, submitted on October 27, 2014, appellant indicated that at 10:00 a.m. on October 20, 2014, after lifting heavy trays several times, her right shoulder and neck burned, and she felt numbness down to her hand. On a handwritten statement attached to the claim form, appellant indicated that on October 18, 2014 pain started when she lifted a tray of mail, and by the end of the day her hand was swelling. She also indicated that she told a "Ms. R.," on October 20, 2014 that her arm was hurting. In the handwritten statement submitted with the July 24, 2015 reconsideration request, appellant described an October 18, 2014 incident in which she dropped a tray of mail while working due to pain in her right shoulder. On a new patient history form dated October 29, 2014, submitted on October 26, 2015, she wrote that she had symptoms of right shoulder, neck, and hand constant burning, numbness, and tingling that had occurred for one to two weeks, since an October 18, 2014 injury.

Although appellant indicated that she told a "Ms. R.," about her shoulder on October 20, 2014, the record does not include a statement from this individual. Supervisor G.M. related on the claim form, which he had signed on October 27, 2014, that on Monday or Tuesday the previous week appellant related that she would be going to the doctor for her shoulder. The supervisor noted that appellant came in on October 27, 2014 requesting light duty and, when told this was not available, asked for a CA-1. He related that she verbally indicated that the shoulder injury occurred by throwing heavy packages, and on the claim form indicated that it was caused

⁹ *Gary J. Watling*, 52 ECAB 278, 280 (2001).

¹⁰ *H.G.*, 59 ECAB 552 (2008).

¹¹ *Elaine Pendleton*, *supra* note 8.

¹² *See Joseph H. Surgener*, 42 ECAB 541 (1991).

by lifting heavy mail trays. The supervisor concluded that appellant had not previously mentioned a shoulder injury.

Dr. Manfredi signed an attending physician's report on November 12, 2014 advising that the diagnosed condition of rotator cuff tear was not employment related. While Dr. Sexton maintained that appellant was not seen by a Dr. Manfredi, the record contains no clarification from Dr. Manfredi disavowing this report or supporting a history of a work incident consistent with any of appellant's accounts of the claimed injury.

Although Dr. Sexton was consistent in his opinion that appellant injured her shoulder on October 18, 2014 when she lifted a tray of mail weighing 50 to 60 pounds and felt an immediate sharp pain, he based his opinion on a history of injury provided by appellant. As his reports only recite the facts as told to him as a physician, and do not offer any further independent evidence that the claimed work incident caused the alleged injury, they are insufficient to establish that the claimed incident or injury occurred.¹³

Given the inconsistencies as to how appellant described her injury, the Board finds that the varying accounts of throwing and lifting cast serious doubt as to the validity of appellant's claim. As such, the Board finds that appellant failed to meet her burden of proof to establish the factual component of fact of injury. As appellant has not established an incident, as alleged, the Board need not evaluate the medical evidence submitted.¹⁴

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 did not meet her burden of proof to establish an employment-related injury on October 20, 2014.

¹³ See *D.T.*, Docket No. 15-143 (issued February 18, 2015).

¹⁴ *Paul Foster*, 56 ECAB 208 (2004).

ORDER

IT IS HEREBY ORDERED THAT the June 17, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 14, 2017
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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