United States Department of Labor
Employees' Compensation Appeals Board

C.R., Appellant	)	
and	)	**Docket No. 18-1332**
	)	**Issued: February 13, 2019**
U.S. POSTAL SERVICE, CENTRAL CARRIER STATION, New Orleans, LA, 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
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 26, 2018 appellant filed a timely appeal from an April 5, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 has met his burden of proof to establish a traumatic injury on January 8, 2017 while in the performance of duty, as alleged.

FACTUAL HISTORY

On October 12, 2017 appellant, then a 61-year-old supervisor customer service, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2017 he sustained a left shoulder torn rotator cuff when the contents shifted in a heavy package he was lifting while in the

[1] 5 U.S.C. § 8101 *et seq.*

performance of duty. He did not stop work. On the reverse side of the claim form, the employing establishment indicated that notice of the claim was received on October 27, 2017. It controverted appellant's claim, noting that he had not reported an injury within 30 days of the alleged employment incident.

In a letter dated November 3, 2017, J.P., a manager of customer service, noted that appellant had not informed anyone about the incident, had not mentioned a shoulder injury to him, and had not displayed an injury to his left shoulder or claimed it was hurting.

By development letter dated November 7, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of medical and factual evidence required and attached a factual development questionnaire for his completion. OWCP afforded appellant 30 days to provide the requested information.

OWCP thereafter received medical evidence. In progress notes dated July 18, 2017, Dr. Ronald J. French, Jr., a treating Board-certified orthopedic and hand surgeon, diagnosed left shoulder impingement tendinosis. He noted that appellant related that he had no recent injury or trauma to his left shoulder, but recently he performed a lot of lifting at work. Appellant also informed Dr. French that he had sustained a left shoulder injury several years prior. A review of an x-ray interpretation revealed mild degenerative changes at the acromioclavicular joint of the left shoulder. On physical examination Dr. French reported mild left shoulder tenderness anterolaterally, no swelling or bruising, full range of motion, pain on internal rotation, and positive impingement sign on abduction.

In a progress report dated August 22, 2017, Dr. French diagnosed possible rotator cuff tear. Physical examination of appellant's left shoulder revealed no tenderness or swelling, full range of motion, positive impingement sign, and positive supraspinatus stress test.

In a statement dated October 13, 2017, appellant related that, while he was working on Sunday, January 8, 2017, he noticed several large boxes on a flatbed truck that needed to be relocated. While lifting a very heavy package, he noticed that the weight of the contents shifted to his left side. Appellant alleged that this caused trauma to his left shoulder. He explained that he did not report the incident at the time as he believed that he would be okay as it was a slight problem. However, as time progressed appellant found that he had decreased ability to use his left arm to lift things. Eventually, he was referred to a specialist who performed a magnetic resonance imaging (MRI) scan, which showed a left shoulder rotator cuff tear requiring surgery.

By decision dated December 8, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the January 8, 2017 employment incident occurred as alleged.

On February 1, 2018 OWCP received an undated statement from appellant which provided additional details regarding the alleged January 8, 2017 incident. Appellant related that the 50- to 60-pound package he lifted on the day in question was unstable and that the contents in the package shifted as he walked with it. No one was present at the time as all the carriers had left and he did not report it the following day because the pain was not severe and he believed that it would go away. However, as time progressed appellant related that he experienced left shoulder pain and

discomfort in the morning while performing varied employment duties, and in the afternoon while distributing buckets of mail and parcels. According to appellant, he did not connect his left shoulder condition with his lifting of the parcel on January 8, 2017 until his memory was triggered in September 2017.

On November 17, 2017 J.P. issued a letter of warning to appellant for failing to comply with the regulations and safety rules that resulted in a shoulder injury. He noted that, on Friday, October 27, 2017, appellant sent him an e-mail informing him that he had injured his left shoulder on January 8, 2017. When questioned about the delay, appellant related that he assumed it was a minor injury, like a pulled muscle, and that he would be fine. He related that he did not seek treatment with his treating physician until he could not lift or move anything and received physical therapy from August to September 2017. While receiving physical therapy, it was discovered that appellant had a torn rotator cuff. Appellant also stated that he sought medical treatment on his own without any authorization. J.P. concluded that appellant had failed to immediately inform anyone in management of the injury, which had caused injury to appellant and cost to the employing establishment.

On February 1, 2018 appellant requested reconsideration. OWCP also received copies of progress reports from Dr. French previously of record, and a new report from him dated November 14, 2017. In the November 14, 2017 report, Dr. French related appellant's physical examination findings and again diagnosed a rotator cuff tear.

By decision dated April 5, 2018, OWCP reviewed appellant's statements in detail and found that the evidence of record was insufficient to establish that the January 8, 2017 employment incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 or specific condition for which compensation is claimed is causally related to the employment injury.[3] 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.[4]

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.[5] First, the employee must submit sufficient evidence to establish that he or she actually experienced

[2] *Supra* note 1.

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

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

[5] *B.F.*, Docket No. 09-0060 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 3.

the employment incident at the time, place, and in the manner alleged.[6] 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.[7]

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 or her subsequent course of action.[8] 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.[9] 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.[10]

ANALYSIS

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

Appellant filed his claim for a January 8, 2017 traumatic injury on October 12, 2017. He alleged that he injured his left shoulder when the contents of a heavy package he was carrying shifted. In a supplemental statement, appellant explained that at the time of the alleged incident he lifted a parcel off a flatbed truck to transport to another section. The parcel weighed between 50 and 60 pounds and the contents shifted while he carried it. Appellant did not immediately report the alleged incident, nor did he seek immediate medical attention. However, on November 17, 2017 the employing establishment issued a letter of warning to him indicating that his failure to timely report the incident caused injury. This employing establishment document at least suggests that appellant was charged with misconduct for not reporting an accepted incident and injury.

By decision dated April 5, 2018, OWCP noted receipt of the employing establishment's November 17, 2017 letter of warning, however, it made no findings relative to fact of injury given the employing establishment's letter of warning which sought to impose discipline based upon failure to report an employment incident which occurred in the performance of duty. As the Board's decisions are final as to the subject matter appealed,[11] OWCP's evaluation of the evidence should be clear and detailed so that the reader understands the reason for the disallowance of the

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

[7] *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 3.

[8] *See Betty J. Smith*, 54 ECAB 174 (2002).

[9] *Linda S. Christian*, 46 ECAB 598 (1995).

[10] *Gregory J. Reser*, 57 ECAB 277 (2005).

[11] 20 C.F.R. § 501.6(d).

benefit and the evidence necessary to overcome the defect of the claim.[12] Herein, although OWCP noted the existence of the November 17, 2017 letter of warning, it did not review and address the evidence as it may relate to fact of injury.

This case must be returned to OWCP for a proper decision to include findings of fact regarding the November 17, 2017 letter of warning. After such further development as necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

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

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 5, 2018 is set aside and the case is remanded to OWCP for further proceedings consistent with this opinion.

Issued: February 13, 2019
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[12] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013); *see also Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).