

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

F.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Richmond, VA, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 19-1209
Issued: November 20, 2019**

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
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 9, 2019 appellant filed a timely appeal from a November 19, 2018 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 has met his burden of proof to establish an injury in the performance of duty on April 27, 2018, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On April 27, 2018 appellant, then a 59-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that he sustained a left arm injury, and possibly a torn rotator cuff on that day while in the performance of duty. In an accompanying statement dated April 27, 2018 appellant related a history of injury that he “[w]as rolling my cart of mail out to load in van. There was a wire con in the way of loading dock. Pushed it up on left and pulled something in my upper left arm.” On the reverse side of the claim form, the employing establishment indicated that appellant stopped work on the date of injury.

In reports dated April 27, and May 10, 2018, Allyson Hudson, a physician assistant, examined appellant and diagnosed left rotator cuff tear and left shoulder pain. She indicated that appellant injured his shoulder when he was pushing something heavy up a ramp and it fell backward hitting his shoulder.

In a development letter dated May 23, 2018, OWCP noted that appellant’s case had been reopened for consideration because he had not returned to work in a full-time capacity. It advised him of the deficiencies of his claim, requested that he provide additional factual and medical evidence to establish his claim, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Appellant submitted a series of physical therapy reports dated May 10, 16, 18, 21, 23, and June 1, 4, 8, and 12, 2018. The initial report dated May 10, 2018 noted a history of injury that appellant was trying to stop a heavy cart at work which caused him to wrench his left shoulder.

In a report June 6, 2018, Dr. Paul Kiritis, a Board-certified orthopedic surgeon, noted appellant’s history of injury as: “left shoulder injury which occurred on April 27, 2018 when he was pushing a 300[-]pound postal cart.” Based on x-ray imaging, Dr. Kiritis diagnosed adhesive capsulitis of the left shoulder.

OWCP received a second handwritten statement from appellant dated April 27, 2018 in which he explained that he “was pushing wire con out of way so I could load my mail and wire con jammed on something and it pulled my left arm.”

By decision dated June 25, 2018, OWCP denied appellant’s claim finding that the evidence of record was insufficient to establish that the injury and/or events occurred in the performance of duty on April 27, 2018, as alleged. It also noted that he had not submitted evidence to establish that his diagnosed medical condition was causally related to the alleged employment incident.

In a second traumatic injury claim (Form CA-1) dated June 25, 2018, appellant alleged that on April 27, 2018 he sustained a left shoulder injury when he pushed a “wire con” onto a lift gate while in the performance of duty. A witness statement on the claim form related that a coworker heard appellant “holler” on April 27, 2018 and saw him holding his left shoulder and tremble in pain.

On July 16, 2018 appellant requested a review of the written record by an OWCP hearing representative, and submitted additional evidence.

In a report dated May 9, 2018, received by OWCP on July 19, 2018, Dr. Kiritis noted that appellant reported that, while he pushed a heavy postal cart up a ramp, it stuck to a hinge, and jarred his shoulder. He diagnosed adhesive capsulitis of the left shoulder and a tear of the left rotator cuff.

In a report dated June 19, 2018, Dr. Kiritis indicated that appellant returned for a follow-up examination regarding his diagnosed left shoulder adhesive capsulitis. He noted that appellant requested to proceed with a manipulation of the left glenohumeral joint with a concomitant injection of steroid. In a duty status report (Form CA-17) of the same date, Dr. Kiritis diagnosed adhesive capsulitis and noted that the injury occurred when appellant was pushing equipment while in the performance of duty. He indicated that he was able to return to work full time with restrictions.

OWCP continued to receive physical therapy reports.

In a report dated July 30, 2018, Dr. Kiritis indicated that, on July 17, 2018, appellant underwent left shoulder arthroscopy which involved manipulation with injection of glenohumeral joint.

By decision dated November 19, 2018, an OWCP hearing representative affirmed the June 25, 2018 decision.

LEGAL PRECEDENT

A claimant seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including 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, that an injury was sustained in the performance of duty as alleged, and that any specific condition or disability claimed is causally related to the employment injury.⁴ 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.⁵

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first

³ *Supra* note 1.

⁴ 20 C.F.R. § 10.115(e), (f); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

⁵ *D.T.*, Docket No. 18-0035 (issued May 10, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

component is whether the employee actually experienced the employment incident that allegedly occurred.⁶ The second component is whether the employment incident caused a personal injury.⁷

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.⁸ 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 his subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish an injury in the performance of duty on April 27, 2018, as alleged.

The Board finds that there are inconsistencies in the evidence of record surrounding appellant's allegations regarding the manner in which the alleged incident occurred which cast serious doubt on appellant's description of the alleged incident. While the evidence supports that appellant pushed a wire con on April 27, 2018, the evidence is inconsistent regarding the mechanism of injury. Appellant did not provide the detailed account of the alleged incident, specific enough to establish a mechanism of injury, as required in a claim for traumatic injury.¹⁰

In his initial notes accompanying his April 27, 2018 Form CA-1, appellant indicated that he pulled something in his left shoulder causing an injury when he pushed a wire con out of the way. In a second April 27, 2018 statement, he related that he was pushing a wire con out of the way when the wire con jammed and pulled his left arm. In a second traumatic injury claim form (Form CA-1) dated June 25, 2018, appellant explained that he had sustained a left shoulder injury when he pushed a "wire con" onto a lift gate. Appellant's statements indicate that in one version, he was simply pushing the wire con when he injured his left shoulder, while in another version he alleged that the wire con jammed and pulled his left arm. His allegations are inconsistent and do not relate with specificity the mechanics of how he had sustained the claimed injury.¹¹

The history of injury appellant provided to his medical providers further related inconsistent descriptions of the mechanism of injury. Ms. Hudson's report, dated April 27, 2018, related that while appellant was pushing a cart up a ramp, it fell backward and injured his shoulder. Dr. Kiritis' report, dated June 6, 2018, related that as appellant pushed a heavy postal cart up a

⁶ *D.T., id.; Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *D.T., id.; John J. Carlone*, 41 ECAB 345 (1989).

⁸ *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

⁹ *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹⁰ *Id.*

¹¹ *See A.M.*, Docket No. 08-1835 (issued February 9, 2009).

ramp, it stuck to a hinge, and jarred his shoulder. Furthermore, the initial history of injury provided in the physical therapy reports related that appellant wrenched his left shoulder when he was trying to stop a heavy cart. The medical record therefore reflects that appellant did not report a consistent history of injury to his medical providers. The Board finds that appellant has not established that he sustained an injury in the performance of duty on April 27, 2018 as alleged because he did not submit sufficient evidence to establish that he actually experienced the incident in the manner alleged.¹² As appellant did not provide a consistent description of the alleged employment incident and the mechanism by which he sustained an injury, he has not met his burden of proof.¹³

The Board finds that appellant has not met his burden of proof to establish that the April 27, 2018 incident occurred in the performance of duty, as alleged. Consequently, it is unnecessary to address the medical evidence of record regarding causal relationship.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 has not met his burden of proof to establish an injury in the performance of duty on April 27, 2018, as alleged.

¹² *Id.*

¹³ *H.D.*, Docket No. 15-1698 (issued May 4, 2016).

¹⁴ *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin v. Gadd*, 57 ECAB 172 (2005).

ORDER

IT IS HEREBY ORDERED THAT the November 19, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 20, 2019
Washington, DC

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

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

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