

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

_____)	
R.P., Appellant)	
)	
and)	Docket No. 19-1233
)	Issued: November 19, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Lacey, WA, Employer)	
_____)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 14, 2019 appellant filed a timely appeal from an April 10, 2019 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 her burden of proof to establish a left hand injury in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the April 10, 2019 decision, OWCP received additional evidence. 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 evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On February 28, 2019 appellant, then a 35-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) for a left hand injury she allegedly sustained while in the performance of duty. She did not identify a specific date of injury or cause of injury, but noted that her hand became numb and stiff on the morning of February 19, 2019. Appellant described her injury as left hand pain and swelling, and noted that she was unable to use that hand thereafter. On the reverse side of the claim form, the employing establishment indicated that she stopped working on February 23, 2019 and resumed work on March 1, 2019. Additionally, it controverted the claim noting this was not a traumatic injury, and appellant had not worked there long enough to have developed carpal tunnel syndrome.³ No additional factual or medical evidence accompanied her Form CA-1.

In a March 8, 2019 development letter, OWCP requested that appellant submit additional evidence in support of her claim. It noted that the evidence provided was insufficient to establish the incident alleged to have caused her injury. OWCP advised appellant of the type of factual and medical evidence needed and provided a questionnaire for her completion, which it noted was needed to substantiate the factual elements of her claim. The questionnaire inquired as to the circumstances of appellant's injury, whether she had sustained prior similar injuries, whether there were witnesses who could confirm her injury, and whether she was alleging a traumatic injury or an occupational disease. OWCP afforded appellant 30 days to submit the requested evidence.

On February 19, 2019 appellant was seen at an urgent care facility by Cynthia Mosebach, an advanced registered nurse practitioner. Ms. Mosebach noted that appellant complained of bilateral hand pain and stiffness for the past three days, and currently her left hand symptoms were more severe than her right hand. Appellant's reported symptoms included burning, numbness and tingling in fingers up to the left elbow area. Ms. Mosebach also noted that appellant reported having slipped and fell on ice Sunday, but did not believe the fall had anything to do with her bilateral upper extremity complaints. She further noted that appellant worked as a mail carrier, which duties included repetitive movements with her hand and wrist. Lastly, Ms. Mosebach noted that her right hand pain and stiffness had mostly resolved. She examined appellant and obtained an x-ray of her left upper extremity, which revealed no fracture/dislocations of the left hand, wrist or elbow. Ms. Mosebach diagnosed left wrist carpal tunnel syndrome, provided a wrist splint, and advised that appellant could return to work on February 20, 2019. February 23, 2019 progress notes from Ms. Mosebach related that appellant presented with increased pain, swelling, and popping in her left hand. She diagnosed possible left-sided carpal tunnel syndrome and advised appellant to follow-up with her primary care physician.

February 25, 2019 progress notes by Dr. Nhu Hang, a family practitioner, indicated that appellant presented with numbness, burning pain, and tingling in her left hand. He noted there was no specific injury appellant could recall. Dr. Hang diagnosed left hand paresthesias and restricted appellant to working no more than eight hours per day.

On February 28, 2019 the employing establishment offered appellant a limited-duty assignment, which appellant accepted.

³ Personnel records indicated appellant's entrance on duty (EOD) date was October 6, 2018.

In a March 11, 2019 attending physician's report (Form CA-20), Dr. Hang indicated that appellant denied a specific injury. He diagnosed left hand paresthesias and noted that appellant's condition was caused or aggravated by an employment activity because she used her hands frequently at work. Dr. Hang also provided follow-up progress notes of the same date.

A March 15, 2019 medical report from Dr. Charles Bender, an orthopedic surgeon, indicated that appellant presented with left hand pain and tingling and noted that no specific injury precipitated her symptoms. He diagnosed left carpal tunnel syndrome that "may be aggravated by her job as a letter carrier."

By decision dated April 10, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that appellant sustained an injury in the performance of duty, as alleged, because no description of how appellant's injury occurred had been provided.

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 timely filed within the applicable time limitation period of FECA,⁵ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁶ 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.⁷

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁸ Fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.⁹ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.¹⁰

⁴ *Supra* note 1.

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

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, but the employee's statements must be consistent with the surrounding facts and circumstances and his subsequent course of action.¹¹ The employee has not met his or her burden of proof of 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. 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established. An employee's statement alleging 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.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left hand injury in the performance of duty, as alleged.

Appellant has not established the factual component of her claim, as she has not sufficiently explained how and when her alleged injury occurred. In her Form CA-1, she alleged that she sustained a left hand injury in the performance of duty, which consisted of numbness, stiffness, pain and swelling. However, appellant did not specify in the area provided a date of injury, or otherwise indicate how her job duties either caused or contributed to her left hand complaints. On the claim form she merely noted that her hand became numb and stiff on the morning of February 19, 2019 and that she was unable to use her left hand thereafter. The employing establishment controverted appellant's claim, noting this was not a traumatic injury and she had not worked there long enough to have developed carpal tunnel syndrome.

Appellant presented no evidence regarding the specific mechanism of injury, as required in a claim for traumatic injury, nor did she allege that she experienced a specific event, incident, or exposure at a definite time, place, and manner.¹³ As well, she did not describe the exact and immediate consequences of the injury. Appellant's vague recitation of the facts does not support her allegation that a specific incident occurred which caused a work-related injury.¹⁴

In a March 8, 2019 development letter, OWCP requested that appellant submit clarifying information describing how and when her claimed injury occurred and whether she was alleging a traumatic injury or an occupational disease. It provided a factual development questionnaire for her completion, which OWCP noted was needed to substantiate the factual elements of her claim. However, appellant did not complete and return the questionnaire, and there is no statement in the record describing a specific alleged employment-related incident and the time it occurred.¹⁵ As

¹¹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹² *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹⁴ *Id.*

¹⁵ *See M.S.*, Docket No. 18-0059 (issued June 12, 2019).

appellant did not timely respond to OWCP's request for factual information, the Board finds that the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.¹⁶

The Board further finds that because appellant failed to establish the first component of fact of injury, it is unnecessary to discuss whether she submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to her employment.¹⁷

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 her burden of proof to establish a left hand injury in the performance of duty, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 19, 2019
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁶ *Id.*

¹⁷ *Id.*