

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

C.G., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Miami, FL, Employer)

**Docket No. 19-1404
Issued: April 14, 2020**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 14, 2019 appellant filed a timely appeal from a May 2, 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 that an incident occurred in the performance of duty on March 7, 2019, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the May 2, 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 March 8, 2019 appellant, then a 45-year-old data collection technician, filed a traumatic injury claim (Form CA-1) alleging that on March 7, 2019 at 1:30 p.m. she sprained her back when she lifted a 40-pound package out of a hamper and felt a pinch in her back while in the performance of duty. She explained that at the time she did not think anything of it. On the reverse side of the claim form, the employing establishment indicated that appellant was injured in the performance of duty and first received medical care on March 8, 2019. It also related that appellant stopped work on March 11, 2019 and had not returned. The employing establishment noted its disagreement with appellant's statements because appellant worked the rest of her shift on the day of the alleged injury and worked six hours the next day before reporting the incident.

A March 8, 2019 state workers' compensation form report signed by Dr. Katherine Martineau, a family medicine specialist, noted that appellant sought treatment for a work-related injury. Dr. Martineau diagnosed a low back muscle strain and sprain and had no preexisting conditions contributing to her diagnosis. She noted that appellant's injury was the major cause for the reported medical condition and listed a series of work restrictions.

In a March 11, 2019 report, Dina Garabedian, a certified physician assistant, noted that appellant presented with back discomfort. She indicated that on March 7, 2019 while at work, appellant lifted an oversized box weighing 16 kilograms. The box was inside a large container, which prevented appellant from properly lifting the box. When she lifted the box she felt a pinch in her back, and when she returned home she took pain medication, but the pain did not subside. Appellant then had x-rays taken which showed she had not broken or dislocated any bones. Ms. Garabedian noted that appellant was experiencing soft tissue pain and had difficulty bending, sitting, standing, and laying down for long periods of time. A physical examination revealed tenderness in appellant's back. Ms. Garabedian diagnosed muscle spasms, soft tissue disorder, lumbago, radiculopathy, and lumbar spine instability. She recommended a lumbar spine MRI scan.

A March 11, 2019 duty status report (Form CA-17) completed by Ms. Garabedian noted that on March 7, 2019 appellant strained her lower back when removing a heavy parcel from a hamper. The report included the clinical findings of muscle spasms and lumbago and related that appellant could not resume work.

In a March 29, 2019 development letter, OWCP advised appellant that additional evidence was required in support of her claim. It noted that the evidence was insufficient to establish that appellant actually experienced the incident or employment factor alleged to have caused injury. OWCP requested that appellant submit a comprehensive narrative medical report from a qualified physician that included a diagnosis and an opinion, supported by medical rationale, addressing how the claimed employment incident caused or aggravated a medical condition and attached a questionnaire for her completion. It afforded appellant 30 days to submit the requested evidence.

In March 8, 2019 urgent care records, Dr. Martineau noted that appellant presented with low back pain. She further noted that on March 7, 2018 appellant lifted a 45-pound box and twisted her back, and then experienced pain in her right lower back over her sacroiliac joint which radiated into her right buttock upon movement. Dr. Martineau related that appellant may have had low

back pain many years ago, but denied chronic back pain. She conducted a physical examination, reviewed appellant's lumbosacral x-ray, and diagnosed low back pain consistent with muscle strain and spasm and degenerative changes.

April 15, 2019 medical records by Ms. Garabedian noted that appellant's MRI scan revealed an annular bulge at L3-L4 and an annual bulge with radiculopathy affecting the heel of appellant's right foot at L5-S1. She referred appellant for pain management for possible epidural injections.

In an April 15, 2019 duty status report (Form CA-17), Ms. Garabedian noted that appellant strained her lower back while removing a heavy parcel from a hamper on March 7, 2019 and reported clinical findings of a bulging disc at L3-L4 and L5-S1.

By decision dated May 2, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record failed to establish fact of injury as appellant had not established that the alleged incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,⁴ 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.⁵ 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.⁶

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.⁷ Fact of injury consists of two components that must be considered in conjunction with one another. The first

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

component is whether the employee actually experienced the employment incident that allegedly occurred.⁸ The second component is whether the employment incident caused a personal injury.⁹

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 or her subsequent course of action.¹⁰ 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 serious doubt on an employee's statements in determining whether a 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.¹¹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the March 7, 2019 employment incident occurred in the performance of duty, as alleged.

Appellant indicated on her claim form filed on March 8, 2019 that she sprained her lower back on March 7, 2019 while she was lifting a heavy package out of a hamper at work. The claim form was signed by appellant's supervisor who indicated that appellant was injured in the performance of duty, but noted that he disagreed with appellant's statements because she worked the rest of her shift on the day of the alleged injury and worked six hours the next day before reporting the incident.

The Board finds that the evidence of record is sufficient to establish that the employment incident occurred on March 7, 2019 as alleged. There are no sufficient discrepancies in the case record regarding appellant's claimed March 7, 2019 employment incident so as to cast serious doubt on the fact that it had occurred on that date in the manner alleged.¹² Appellant's claim of a March 7, 2019 employment incident has not been refuted by strong or persuasive evidence.

⁸ See *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

¹⁰ See *M.F.*, *supra* note 8; *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹² See *D.L.*, Docket No. 18-1189 (issued February 15, 2019).

On March 8, 2019 appellant went to urgent care, and Dr. Martineau noted that she presented with low back pain and had lifted a heavy box the day before. On that same date, Dr. Martineau signed a state workers' compensation form report indicating that appellant experienced a work-related injury. In March 11, 2019 medical records, Ms. Garabedian noted that on March 7, 2019 while at work appellant lifted an oversized box inside a large container.

The Board finds that appellant has provided a consistent account of the time, place, and manner of injury. Appellant consistently described a lower back injury due to lifting a heavy box from inside a larger container. While the employing establishment noted that it disagreed with her claim, appellant provided a singular account of the mechanism of injury and her actions surrounding the incident corroborate her description.¹³ She continued working and tried to treat the pain with medication, but the pain did not subside so the next day she sought medical treatment.

As appellant has established that the March 7, 2019 employment incident factually occurred, the question becomes whether this incident caused an injury.

The Board will therefore remand the case for consideration of the medical evidence on the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted March 7, 2019 employment incident.¹⁴

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the March 7, 2019 employment incident occurred in the performance of duty, as alleged. The case is not in posture for decision, however, with regard to whether she has established an injury causally related to the accepted March 7, 2019 employment incident.

¹³ See *G.G.*, Docket No. 19-0490 (issued October 3, 2019).

¹⁴ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 2, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 14, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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