

of a bag that was stuck on a belt in an x-ray tunnel, she strained her lower back in the performance of duty. On the reverse side of the claim form a supervisor noted that appellant's manager received two separate e-mail notifications from appellant on different dates indicating conflicting dates and times that the injury was alleged to have occurred.

In a development letter dated January 19, 2017, OWCP informed appellant of the deficiencies of her claim and requested that she respond to a questionnaire and submit additional evidence. Appellant was afforded 30 days to provide the requested information. She did not respond.

By decision dated February 21, 2017, OWCP denied appellant's claim finding that she had not submitted documentation in support of her claim and had not responded to its development letter of January 19, 2017.

Following OWCP's decision, appellant submitted medical evidence.

In a note dated December 27, 2016, Dr. Thomas Ball, Board-certified in family medicine, noted that appellant had been evaluated in his office on that date. He indicated that she should be able to return to work on January 2, 2016.² Appellant also submitted a duty status report (Form CA-17) from Dr. Ball dated December 27, 2016 that diagnosed a low back strain and indicated that appellant required no restrictions and could return to work on January 1, 2017.

In a note dated January 3, 2017, Dr. Ball indicated that appellant's absence be excused through January 6, 2017.

In a note dated January 4, 2017, Dr. Scott Cabazolo, a chiropractor, indicated that appellant had been under his care for back pain and would be unable to work from January 8 through 21, 2017.

In a note dated January 23, 2017, Dr. Cabazolo requested that appellant be excused from work from January 22 to 29, 2017 and noted that she could return to work on January 29, 2017 without restrictions. Appellant also submitted Form CA-17 reports from Dr. Cabazolo dated January 9, 12, and 23, 2017, which diagnosed low back pain and kept her off work through January 29, 2017.

On March 4, 2017 appellant requested a telephonic hearing before OWCP's Branch of Hearings and Review. With her request, she submitted a report, dated December 27, 2016 from Dr. Ball, which noted a diagnosis of back pain.

In a letter dated March 4, 2017, appellant explained that she had not received a development letter from OWCP. She stated that she had submitted medical evidence to the employing establishment for submission to the record, including reports from her physicians.

² The Board notes that the return to work date is a typographical error and should have been noted as January 2, 2017.

The hearing was held on September 12, 2017. Appellant stated that there had been a mix-up regarding the date of injury as she had thought December 21, 2016 was a Wednesday, but that it was a Tuesday. She explained that she had initially filled out her Form CA-1 claiming a traumatic injury on December 25, 2016, but that the claimed injury had occurred on December 21, 2016. Appellant stated that she must have listed the date of injury as December 22, 2016 in her e-mail because she could not remember the appropriate day of the week. The hearing representative asked directly if the injury occurred on December 21, 2016 and appellant answered that it had. He asked when she had reported the injury, and appellant responded that she had told someone that she was hurt on December 21, 2016 and that she had subsequently reported it to a supervisor on December 27, 2016. Appellant reiterated that she had not received a development letter from OWCP requesting further documentation. The hearing representative afforded 30 days for the submission of additional evidence to the record.

In a report dated December 27, 2016, Dr. Ball examined appellant for complaints of back pain. He noted that the onset of the low back pain followed an incident at work in which appellant reached to pull a backpack out of an x-ray machine and felt a “tweak” in her back at that time, which became sore on the evening of incident. Dr. Ball noted that she had back pain for five days. He also noted that appellant was off work for two days following the incident and that, two days before his examination, she had returned to work, experiencing increased pain in her lower back. On examination Dr. Ball noted no swelling, pain, or deformities of appellant’s spine, with full range of motion, a negative crossed straight leg raising test, and no paraspinous muscle spasm. He diagnosed low back strain due to a pulling injury at work on December 22, 2016.

On October 4, 2017 the employing establishment noted discrepancies in e-mail correspondence between appellant and her supervisors as well as her testimony at the hearing regarding the date of her claimed injury and provided the e-mail correspondence it had referenced. It stated that, while appellant had identified her date of injury as a Tuesday at the hearing, December 21, 2016 was a Wednesday. OWCP further noted that, while appellant stated that she reported her injury to a supervisor on December 27, 2016, she had e-mailed a supervisor regarding her injury on December 22, 2016. The employing establishment attached an e-mail from appellant to a supervisor dated Thursday, December 22, 2016 in which she wrote, “Sorry I couldn’t make it in today but on Monday I tweaked my lower back divesting.” In an e-mail dated December 29, 2016, a supervisor told appellant that she would need to make a correction on her form, as she had previously claimed that she hurt her back divesting on Monday, December 19, 2016. In an e-mail dated December 29, 2016, appellant stated that she mixed up the date and that she had been injured on Wednesday, December 21, 2016.

By decision dated November 15, 2017, the hearing representative affirmed OWCP’s February 21, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA 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,³ 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.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 whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.⁶ Fact of injury consists of two components that must be considered conjunctively. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁷ Second, the employee must submit sufficient medical evidence to establish that the employment incident caused a personal injury.⁸

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.⁹ 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 or her 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. Circumstances such 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 statement in determining whether a *prima facie* case has been established.¹⁰

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a back injury in the performance of duty on December 21, 2016, as alleged.

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁷ *C.B.*, Docket No. 18-0071 (issued May 13, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁰ *D.R.*, Docket No. 19-0072 (issued June 24, 2019).

While appellant provided conflicting evidence as to the day of the week on which her claimed injury occurred, that discrepancy is found to be insufficient to cast serious doubt as to the claimed employment incident alleged in her claim. Appellant indicated in her first e-mail to a supervisor on Thursday, December 22, 2016 that she had injured her back on Monday, December 19, 2016. Dr. Ball reported in one report that the incident had occurred on December 22, 2016. Shortly, after her initial e-mail, she corrected the date of injury to December 21, 2016. The Board finds that these inconsistencies are insufficient to cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged. Appellant has otherwise consistently alleged an injury in the performance of duty on December 21, 2016. Her Form CA-1 listed December 21, 2016 as the date of injury. Due to the initial discrepancy in her initial e-mail, appellant clarified to her supervisor in an e-mail dated December 29, 2016 that she had been incorrect as to the day, but she was alleging an injury on Wednesday, December 21, 2016. Her notification to the employing establishment of her injury occurred in a timely manner and she obtained medical treatment, submitting a report with a diagnosis of low back strain from Dr. Ball dated December 27, 2016. Appellant provided notes from physicians as to dates of disability from work consistent with a contemporaneous employment injury. Finally, she sufficiently explained that she had been incorrect as to the day of the week on which her claimed injury had occurred.

The Board finds that, although OWCP claimed inconsistencies in the record, they are insufficient to cast serious doubt as to whether the event of December 21, 2016 occurred as alleged. As such, appellant has met her burden of proof to establish that the employment incident of December 21, 2016 occurred as alleged.

As appellant has established that the December 21, 2016 employment incident occurred as alleged, further consideration of the medical evidence is necessary.¹¹ Therefore, the case will be remanded to OWCP to evaluate the medical evidence and determine whether she has met her burden of proof to establish a medical condition causally related to the accepted December 21, 2016 employment incident.¹² Following such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish an employment injury in the performance of duty on December 21, 2016, as alleged. The Board further finds that the case is not in posture for decision with regard to causal relationship between her claimed back conditions and the accepted December 21, 2016 employment incident.

¹¹ *D.C.*, Docket No. 19-0716 (issued September 13, 2019); *M.D.*, Docket No. 18-1365 (issued March 12, 2019).

¹² *D.C.*, *id.*; *A.R.*, Docket No. 18-0924 (issued August 13, 2019); *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

ORDER

IT IS HEREBY ORDERED THAT the November 15, 2017 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: February 18, 2020
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board