

experienced “severe back pain” as he was bending over to load for a delivery while in the performance of duty. He stopped work that day. On the reverse side of the claim form, appellant’s supervisor checked a box marked “Yes” indicating that appellant had been injured in the performance of duty.

Appellant submitted an accident investigation worksheet indicating that he was injured on July 10, 2017 at 8:30 a.m. when he “picked up a tub to place in a hamper [and] heard a popping sound in his back and felt pain.”

A hospital report dated July 10, 2017, indicated that appellant was diagnosed with acute low back pain without sciatica, unspecified back pain laterally, and a lumbar strain.

In an undated witness statement, a coworker testified that he saw appellant on July 10, 2017 around 8:30 a.m., trying to pick up a yellow tray to put it on a hamper and injuring his back. He indicated that he saw appellant bending his knees as he was picking up the tray.

In a duty status report (Form CA-17) dated July 10, 2017, an unidentifiable healthcare provider diagnosed “increased tone and tender [l]eft lumbar region” and described how the injury occurred “while loading hamper bent over and pulled a tray and heard popping sound.”

On July 14, 2017 the employing establishment controverted the claim and argued that no medical evidence had been provided to establish causal relationship between appellant’s medical conditions and the factors of his federal employment.

In a July 25, 2017 development letter, OWCP indicated that when appellant’s claim was received it appeared to be a minor injury that resulted in minimal or no lost time from work and, based on these criteria and because the employing establishment did not controvert continuation of pay or challenge the case, payment of a limited amount of medical expenses was administratively approved. It stated that it had reopened the claim for formal consideration of the merits because he had not returned to work in a full-time capacity. OWCP provided a development questionnaire for appellant’s completion to substantiate the factual basis of his claim. Appellant was afforded 30 days to respond.

Appellant returned to full-time, regular-duty work on August 1, 2017.

By decision dated August 25, 2017, OWCP found that the evidence of record failed to establish that the July 10, 2017 employment incident occurred as alleged. It noted that appellant had failed to respond to the development questionnaire.

Appellant subsequently submitted a July 10, 2017 hospital report, wherein Dr. Daniel J. Hermes, a Board-certified emergency medicine specialist, noted that appellant had reported hurting his back while lifting approximately five pounds at work. Dr. Hermes diagnosed back pain without sciatica, unspecified back pain laterally, and a lumbar strain. An accompanying diagnostic study dated July 10, 2017 revealed very minimal arthritis.

On an appeal request form dated October 23, 2017 appellant requested a review of the written record by a representative of OWCP’s Branch of Hearings and Review. The form was postmarked October 24, 2017.

By decision dated December 7, 2017, an OWCP hearing representative denied appellant's request for a review of the written record, finding that his request was untimely because it was not made within 30 days of its August 25, 2017 decision. It further indicated that it had exercised its discretion and denied the request as the relevant issue of the case could be addressed by requesting reconsideration and submitting evidence not previously considered by OWCP.

LEGAL PRECEDENT -- ISSUE 1

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,² 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.³ 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.⁴

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.⁵ 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.⁶ Second, the employee must submit sufficient medical evidence to establish that 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 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

² *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

³ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁴ *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).

⁵ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁶ *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).

⁷ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

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

medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁹

ANALYSIS -- ISSUE 1

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

Appellant's July 10, 2017 Form CA-1 alleged that he sustained "severe back pain" as a result of bending over and hearing a popping sound in his back while loading for delivery while in the performance of duty. On the reverse side of the claim form, his supervisor did not contest that appellant had been injured in the performance of duty, as alleged. The evidence of record contains a witness statement from appellant's coworker who testified that he saw appellant experience back pain on July 10, 2017 around 8:30 a.m., as he was trying to pick up a yellow tray to put it on a hamper. Appellant also submitted an accident investigation worksheet indicating that he was injured on July 10, 2017 at 8:30 a.m. while he was inside loading when he picked up a tub to place in a hamper and heard a popping sound in his back and felt pain. Another July 10, 2017 workers' compensation worksheet indicated that he injured his back while loading that same day. The Board therefore finds that no dispute exists as to whether appellant was bending and lifting while loading mail at work on July 10, 2017 and therefore he has established that the employment incident occurred as alleged.

As appellant has established that the July 10, 2017 employment incident occurred as alleged, further consideration of the medical evidence is necessary.¹⁰ Therefore, the case will be remanded to OWCP to evaluate the medical evidence and determine whether he has met his burden of proof to establish a medical condition causally related to the accepted July 10, 2017 employment incident.¹¹ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.¹²

CONCLUSION

The Board finds that the case is not in posture for a decision.¹³

⁹ *D.R.*, Docket No. 19-0072 (issued June 24, 2019).

¹⁰ *D.C.*, Docket No. 19-0716 (issued September 13, 2019); *M.D.*, Docket No. 18-1365 (issued March 12, 2019).

¹¹ *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).

¹² The record submitted to the Board includes a June 5, 2017 left wrist x-ray report which is a medical record of another claimant. Upon return of the case file, this x-ray report should be removed from appellant's claim file.

¹³ In light of the Board's disposition as to Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the August 25, 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 25, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board