

FACTUAL HISTORY

On September 27, 2017 appellant, then a 55-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that, on September 26, 2017, she sustained a left shoulder injury while in the performance of duty when, during defensive tactics training, she pulled/strained her left shoulder muscle near the rotator cuff. She did not stop work. On the reverse side of the claim form, appellant's supervisor checked a box marked "Yes" indicating that appellant had been injured while in the performance of duty as his knowledge of the facts about the claimed injury agreed with her statement.

In an October 17, 2017 development letter, OWCP advised appellant of the factual and medical deficiencies in her claim. It informed her of the type of evidence necessary to establish her claim and provided a questionnaire for her completion regarding the facts and circumstances of the injury. OWCP afforded appellant 30 days to respond.

In response appellant submitted reports dated September 28 and October 11, 2017 from Dr. Christopher C. Lai, a Board-certified orthopedic surgeon, who diagnosed strain of muscles and tendons of the rotator cuff of the left shoulder. Dr. Lai noted that appellant had complained of left shoulder pain since September 26, 2017 after performing training where she was "attacking and also being defensive" at work. He further indicated that she was doing a significant amount of stabbing and defending motions and following those activities she had severe pain of the left shoulder. The pain was anteriorly and laterally and appellant subsequently had pain with overhead activities and reaching behind her back. She had no numbness, tingling, or instability. Dr. Lai opined that her symptoms were due to the injury she sustained on September 26, 2017 while working as an officer.

On September 27, 2017 the employing establishment executed an authorization for medical examination and/or treatment (Form CA-16) allowing treatment for left shoulder muscle strain.

An x-ray report dated September 27, 2017 noted a normal left shoulder.

By decision dated November 22, 2017, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the September 26, 2017 employment incident occurred as alleged. It noted that she had not responded to the questionnaire provided with the October 17, 2017 development letter. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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

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

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 this case is not in posture for decision.

Appellant's September 27, 2017 Form CA-1 alleged that she sustained a left shoulder injury during defensive tactics training when she pulled/strained her left shoulder muscle near the rotator cuff. The employing establishment noted its agreement with the claimed mechanism of injury. Dr. Lai's medical reports diagnosed strain of muscles and tendons of the rotator cuff of the left shoulder and noted that appellant had complained of left shoulder pain since September 26, 2017 after performing training in which she was "attacking and also being defensive" at work. He further indicated that she was doing a significant amount of "stabbing and defending motions" and following that she had severe pain of the left shoulder. Appellant's description of the employment

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).

incident is not contradicted by her medical reports or any other evidence of record. Moreover, she sought medical treatment shortly after her injury, just two days following the employment incident. Appellant's account of the alleged incident is consistent with the surrounding facts and circumstances and her subsequent course of action does not cast doubt on the validity of the claim. Thus, the Board finds that given the above-referenced evidence, she has alleged with specificity that the incident occurred at the time, place, and in the manner alleged.¹¹

As appellant has established that the September 26, 2017 employment incident occurred as alleged, the question becomes whether this incident caused a personal injury.¹² Thus, the Board will set aside OWCP's November 22, 2017 decision and remand the case for consideration of the medical evidence. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish causal relationship.

CONCLUSION

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

¹¹ *Id.*

¹² See *B.S.*, Docket No. 19-0524 (issued August 8, 2019); *Willie J. Clements*, 43 ECAB 244 (1991).

ORDER

IT IS HEREBY ORDERED THAT the November 22, 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 24, 2020
Washington, DC

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

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

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