United States Department of Labor
Employees' Compensation Appeals Board

O.G., Appellant	)	
and	)	**Docket No. 20-0399**
	)	**Issued: July 20, 2020**
U.S. POSTAL SERVICE, ALICE POST OFFICE, Alice, TX, Employer	)	

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 December 10, 2019 appellant filed a timely appeal from a November 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 his burden of proof to establish an injury in the performance of duty on September 17, 2019, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. 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 additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On September 17, 2019 appellant, then a 28-year-old sales and services distribution associate, filed a traumatic injury claim (Form CA-1) alleging that on that day he suffered a left, lower back strain when pulling on a postal container while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged by checking a box marked "Yes" that appellant was injured in the performance of duty, but noted that he had a preexisting back injury from his previous employment. Appellant stopped work on September 18, 2019 and returned on September 26, 2019.

X-ray views of appellant's lumbar spine, dated September 18, 2019, were negative and revealed no evidence of spondylolysis, spondylolisthesis, bone destruction, or fracture.

In an October 2, 2019 development letter, OWCP informed appellant that the evidence of record was insufficient to establish his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Dr. Roberto Diaz, a Board-certified specialist in internal medicine, noted in a September 18, 2019 report that on September 17, 2019 appellant felt a pop in his lower back when he applied extra force to close a container at work. He indicated that appellant's lower back pain radiated down his thigh, leg, and knee. Dr. Diaz examined appellant and diagnosed low back pain and left-sided sciatica. In an accompanying work status report, he listed appellant's work restrictions and indicated that he could return to work with restrictions on September 25, 2019.

In a September 25, 2019 report, Dr. Diaz noted that appellant was experiencing continued back pain. He reviewed x-rays of appellant's lumbar spine and diagnosed low back pain and left-sided sciatica. In an accompanying work status report, Dr. Diaz diagnosed lower back strain. He listed appellant's work restrictions and advised that they were expected to last through October 2, 2019.

Dr. Diaz noted in an October 2, 2019 report that appellant had continued lower back pain radiating to the bilateral lower legs with sporadic numbness and tingling. He examined appellant and again diagnosed low back pain and left-sided sciatica. In an accompanying work status report, Dr. Diaz diagnosed lower back strain. He listed appellant's work restrictions and advised that they were expected to last through October 16, 2019.

In an October 16, 2019 report, Dr. Diaz noted that appellant was experiencing continued back pain. He diagnosed low back pain and left-sided sciatica and referred appellant for a maximum medical improvement (MMI) evaluation. In an accompanying work status report, Dr. Diaz diagnosed lower back strain. He listed appellant's work restrictions and advised that they were expected to last through October 30, 2019.

By decision dated November 8, 2019, OWCP denied appellant's traumatic injury claim finding that the factual component of fact of injury had not been established. It explained that the evidence of record did not support that the incident occurred as alleged. OWCP found that appellant had not responded to its October 2, 2019 development letter requesting specific factual

information as to whether he had any similar symptoms or disability prior to the employment incident after the employing establishment alleged that he had a previous back injury from prior employment. 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 FECA[3] 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 has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[7] The second component is whether the employment incident caused a personal injury.[8]

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 her subsequent course of action.[9] The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.[10] 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 statements alleging that an injury

[3] *Supra* note 1.

[4] *S.S.*, Docket No. 19-1815 (issued June 26, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *M.H.*, Docket No. 19-0930 (issued June 17, 2020); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *S.A.*, Docket No. 19-1221 (issued June 9, 2020); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[7] *R.K.*, Docket No. 19-0904 (issued April 10, 2020); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[8] *Y.D.*, Docket No. 19-1200 (issued April 6, 2020); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *J.K.*, Docket No. 19-1848 (issued May 29, 2020); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[10] *S.S.*, *supra* note 4.

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 the case is not in posture for decision.

Appellant filed a traumatic injury claim alleging that he suffered a left, lower back strain when pulling on a postal container while in the performance of duty on September 17, 2019. He has provided a single account of the mechanism of injury which has not been refuted by any evidence in the record. As noted above, a claimant's statement that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[12] Appellant has consistently related that he injured his lower back on September 17, 2019 while closing a container at work which has been confirmed by Dr. Diaz's contemporaneous medical reports. The employing establishment also confirmed by checkmark "Yes" that the alleged injury occurred in the performance of duty. The Board therefore finds that appellant has established that the September 17, 2019 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the September 17, 2019 employment incident factually occurred, the question becomes whether this incident caused or aggravated an injury. Thus, the Board will set aside OWCP's November 8, 2019 decision and remand the case for consideration of the medical evidence of record. The question of whether appellant had a preexisting condition which was aggravated by the accepted incident should be addressed on remand. Following this and such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury or condition causally related to the accepted September 17, 2019 employment incident.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an incident occurred in the performance of duty on September 17, 2019, as alleged. The Board further finds that case is not in posture for decision with regard to whether he has established an injury causally related to the accepted September 17, 2019 employment incident.

[11] *M.H., supra* note 5; *D.B.*, 58 ECAB 464, 466-67 (2007).

[12] *Id*.

ORDER

IT IS HEREBY ORDERED THAT the November 8, 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: July 20, 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