

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

G.H., Appellant)	
)	
and)	Docket No. 19-1971
)	Issued: May 20, 2020
U.S. POSTAL SERVICE, POST OFFICE,)	
Pearland, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 26, 2019 appellant filed a timely appeal from a July 8, 2019 merit decision and an August 29, 2019 nonmerit 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

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish that an injury occurred in the performance of duty on May 31, 2019, as alleged; and (2) whether OWCP properly

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.*

denied appellant's request for a review of the written record by an OWCP hearing representative as untimely filed under 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On June 3, 2019 appellant, then a 57-year-old customer services supervisor, filed a traumatic injury claim (Form CA-1) alleging that on May 31, 2019 she was injured while in the performance of duty. She explained that she was in the letter distribution area of the workroom floor when she lifted a tray of letters and sustained a right shoulder strain. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured in the performance of duty on May 31, 2019, but controverted her claim, stating that its knowledge of the facts about the alleged injury did not agree with her statements because in 2014 she sustained right hand carpal tunnel syndrome for which she received physical therapy and medical treatment twice a month.

In a June 6, 2019 development letter, OWCP informed appellant that the evidence received to date was insufficient to support her claim for compensation benefits. It advised her of the type of factual and medical evidence necessary to establish her claim and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

June 3, 2019 urgent care records signed by Ana Bermea, a nurse practitioner, indicated that appellant complained of right shoulder pain. Ms. Bermea noted that on May 31, 2019 appellant was injured at work when she lifted a five-pound box of mail. A physical examination of appellant's right shoulder revealed diffuse pain and pain upon abduction. Ms. Bermea diagnosed a right shoulder sprain and recommended that appellant take pain medication as needed and return to work with restrictions. A June 3, 2019 urgent care visit summary indicated that appellant presented with shoulder and right arm pain and noted a diagnosis of a right shoulder sprain/strain.

A June 3, 2019 duty status report (Form CA-17) signed by Ms. Bermea indicated that appellant was injured on May 31, 2019 by lifting a box that was over five pounds. She further indicated that the injury caused appellant's right shoulder sprain diagnosis, and that appellant could return to work with restrictions.

On June 3, 2019 appellant received a prescription for pain medication authorized by Dr. Wilner Jeudy, Board-certified in family practice.

June 10, 2019 urgent care records signed by Ms. Bermea indicated that appellant complained of right shoulder pain which increased when laying down at night. Ms. Bermea reported that appellant sustained a work-related injury to her right shoulder and right arm on May 31, 2019 while lifting a five-pound box of mail. She continued to diagnose a right shoulder sprain and recommended physical therapy. A June 10, 2019 Form CA-17 signed by Ms. Bermea indicated that appellant was injured on May 31, 2019 when she lifted a box of mail and experienced right shoulder pain. Ms. Bermea repeated the diagnosis of a right shoulder sprain and indicated that appellant could resume work with the restrictions.

On June 24 and July 1, 2019 Dr. Haala Hai, an osteopath Board-certified in family medicine, indicated that appellant complained of right shoulder pain due to lifting a five-pound

box of mail at work on May 31, 2019. She reported that appellant experienced weakness in her arm, especially when lifting. Dr. Hai diagnosed a right shoulder sprain, recommended medication, and provided work restrictions.

A June 21, 2019 Form CA-17 containing an illegible signature indicated that appellant was injured while lifting a box over five pounds on May 31, 2019, diagnosed a right shoulder sprain, and provided work restrictions.

By decision dated July 8, 2019, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the events occurred on May 31, 2019, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant continued to submit additional medical evidence. By an appeal request form dated August 7, 2019, and postmarked on August 8, 2019, she requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

By decision dated August 29, 2019, OWCP's Branch of Hearings and Review denied appellant's request for a review of the written record, finding that it was untimely filed as it was not postmarked within 30 days of the issuance of the July 8, 2019 decision. After exercising its discretion, the Branch of Hearings and Review further found that the merits of the claim could equally well be addressed through the reconsideration process.

LEGAL PRECEDENT -- ISSUE 1

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 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 whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁷ 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 *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyet*, 41 ECAB 992 (1990).

⁷ *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence, in the form of medical evidence, to establish that 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 to establish the occurrence of an injury when there are inconsistencies in the evidence that 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 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 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 -- ISSUE 1

The Board finds that appellant has established that the May 31, 2019 incident occurred in the performance of duty, as alleged.

Appellant's CA-1 claim form, filed on June 3, 2019, alleged that on May 31, 2019 she lifted a tray of letters at work and sustained a right shoulder strain. She sought medical treatment from an urgent care center on June 3 and 10, 2019, and urgent care records and a Form CA-17 from those dates signed by Ms. Bermea indicate that appellant complained of right shoulder pain and was injured at work when she lifted a box of mail on May 31, 2019. June 24 and July 1, 2019 urgent care records signed by Dr. Hai noted that appellant complained of right shoulder pain due to lifting a box of mail at work on May 31, 2019.

The Board finds that appellant has established that the incident involving lifting a box of mail and experiencing right shoulder pain while at work occurred on May 31, 2019, as alleged. Appellant provided consistent statements on her claim form and in her medical records which establish that the alleged employment incident occurred on May 31, 2019.¹² She has provided a single account of the mechanism of injury that has not been refuted by any evidence in the record.¹³ On the reverse side of appellant's claim form the employing establishment acknowledged that

⁸ *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *D.B.*, *supra* note 8.

¹² *S.B.*, Docket No. 19-1499 (issued January 27, 2020).

¹³ *Id.*

appellant was injured in performance of duty on May 31, 2019. As stated above, an employee's statements 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.¹⁴ The Board therefore finds that appellant has established that the May 31, 2019 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the May 31, 2019 employment incident factually occurred, the question becomes whether this incident caused a personal injury.¹⁵ The Board will, therefore, 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 a condition causally related to the accepted May 31, 2019 employment incident.

CONCLUSION

The Board finds that that appellant has established that an incident occurred in the performance of duty on May 31, 2019, as alleged. The Board further finds, however, that the case is not in posture for decision as to whether appellant has established a condition causally related to the accepted May 31, 2019 employment incident.¹⁶

¹⁴ *Supra* note 11.

¹⁵ *Supra* note 12.

¹⁶ In light of the disposition for Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the July 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: May 20, 2020
Washington, DC

Alec J. Koromilas, 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