

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

T.A., Appellant	)	
	)	
and	)	Docket No. 19-1525
	)	Issued: March 4, 2020
U.S. POSTAL SERVICE, POST OFFICE,	)	
Riverview, FL, Employer	)	
	)	

*Appearances:*  
Capp P. Taylor, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
JANICE B. ASKIN, Judge  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On July 9, 2019 appellant, through counsel, filed a timely appeal from a March 25, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty, as alleged.

## FACTUAL HISTORY

On July 31, 2018 appellant, then a 35-year-old rural carrier, filed an occupational disease claim (Form CA-2) for a low back injury while in the performance of duty. She indicated that she initially injured her back on June 27, 2017 when pulling herself into her truck and she reinjured her back on July 13, 2017 when delivering a package on her route. Appellant identified June 27, 2017 as the date she first became aware of her condition and realized it was caused or aggravated by factors of her federal employment. On the reverse side of the claim form, the employing establishment indicated that she had previously filed a claim for a June 27, 2017 injury, which OWCP assigned File No. xxxxxx213. It further noted that OWCP denied the prior claim on August 16, 2017.<sup>3</sup>

OWCP subsequently received a copy of appellant's rural carrier position description. Appellant's duties included sorting mail, loading mail into a vehicle, and delivering mail. Her physical requirements included lifting and carrying 0 to 45 pounds on an intermittent basis for eight hours a day, intermittent bending for four hours a day, intermittent pulling and pushing for one hour a day, intermittent twisting for eight hours a day, and driving a vehicle for six hours a day.

In a July 23, 2018 statement, appellant indicated that, on June 27, 2017, she suffered a low back strain while getting into her postal vehicle. She noted that she had filed a claim for that injury, assigned OWCP File No. xxxxxx213. Appellant's condition improved and she resumed her regular duties on July 12, 2017. She stated that prior to June 27, 2017 she did not have any issues with her back. Appellant also noted that on July 13, 2017, her second day back to work, she injured her low back again while bending over and putting down a parcel. The pain was more intense, especially on the right side, and it radiated down her right leg. Appellant was treated at a walk-in clinic and was prescribed medication.

Appellant's pain did not resolve, and she was referred to Dr. Fabio Fiore, an orthopedic surgeon, who ordered a lumbar spine magnetic resonance imaging (MRI) scan. In August 2017, Dr. Fiore recommended the work restriction of not lifting over five pounds. He also recommended trigger point injections, but appellant declined. Appellant noted that she had to return to work around mid- to late-September 2017 because her workers' compensation claim was denied and her leave was used to cover her previous time off. At that time Dr. Fiore's work restrictions for appellant included a five-pound intermittent lifting restriction of four hours per day with no twisting. She related that those restrictions prohibited her from performing the duties required in her job description.

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<sup>3</sup> The current record confirms that appellant previously filed a claim for a June 27, 2017 traumatic injury, which OWCP denied under File No. xxxxxx213 on August 16, 2017. This prior claim is the subject of a separate appeal assigned Docket No. 19-1524.

In an August 15, 2018 development letter, OWCP informed appellant that additional factual and medical evidence was needed to establish her claim. It advised her of the type of factual and medical evidence necessary and attached a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence. No additional evidence was submitted.

By decision dated September 24, 2018, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the alleged events occurred as described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

A November 19, 2018 letter from Dr. Fiore indicated that he reviewed appellant's urgent care records regarding the June 27, 2017 employment incident which caused her back strain and her July 23, 2018 statement. He noted that on July 11, 2017 she was instructed by a physician to return to work, as there were no continuing symptoms in her low back. On July 13, 2017, a day after appellant returned to work, she experienced renewed pain in her low back while bending over and putting down a parcel. The pain was more intense than before and also radiated down her leg. Dr. Fiore recommended work restrictions of no lifting over five pounds and no twisting from July 13 to September 18, 2017. On September 18, 2017 appellant was able to return to work without any restrictions, as her symptoms had subsided.

Dr. Fiore stated that appellant's job duties of extensive moving in and out of cars, lifting packages of various weights from the ground, and carrying those packages for delivery would place stress on the preexisting low back degenerative conditions identified in appellant's MRI scan. He opined that the physical requirements of her position such as frequent lifting, twisting, and climbing in and out of a car would aggravate her preexisting lumbar degenerative condition, and stated that the July 13, 2017 incident was consistent with further aggravation of her degenerative condition.

On January 17, 2019 appellant, through counsel, requested reconsideration. Counsel noted that there was new evidence from Dr. Fiore, as well as appellant's previously submitted July 23, 2018 statement. He related that appellant originally filed a traumatic injury claim (Form CA-1), and that she suffered renewed pain on her second day back at work after her date of injury on June 27, 2017. Counsel further noted that Dr. Fiore stated in his November 18, 2018 report that appellant's low back condition was the result of a degenerative condition, which was caused or aggravated by the factors of her federal employment that placed stress on her back, including frequently moving in and out of vehicles, lifting packages of various weights from ground level, and carrying packages for delivery.

By decision dated March 25, 2019, OWCP denied modification of its September 24, 2018 decision.

## LEGAL PRECEDENT

An employee seeking benefits under FECA<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>8</sup>

An employee's statement 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.<sup>9</sup> Moreover, 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, as alleged, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.<sup>10</sup> An employee has not met his or her burden of proof establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>11</sup> Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury,

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<sup>4</sup> *Supra* note 2.

<sup>5</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>6</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>7</sup> *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).

<sup>8</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>9</sup> *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>10</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

<sup>11</sup> *P.A.*, Docket No. 19-1036 (issued November 19, 2019); *D.B.*, 58 ECAB 464 (2007).

and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>12</sup>

### **ANALYSIS**

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

In her Form CA-2, appellant stated that she initially sustained a low back injury as she was pulling herself into her truck on June 27, 2017. She additionally alleged that she sustained a second low back injury on July 13, 2017 while delivering a package on her route. In a July 23, 2018 statement, appellant indicated that on June 27, 2017 she injured her low back while getting into her postal vehicle, and she also noted that on July 13, 2017 she injured her low back again while bending over and putting down a parcel. Appellant's rural carrier position description included delivering mail, and her physical requirements included intermittent bending for four hours a day, intermittent twisting for eight hours a day, and driving a vehicle for six hours a day. Additionally, Dr. Fiore stated that appellant's job duties of extensive moving in and out of cars and lifting packages from the ground would place stress on her preexisting low back degenerative conditions, and he opined that the physical requirements of appellant's position such as frequent lifting, twisting, and climbing in and out of a car would aggravate her preexisting lumbar degenerative condition. The Board thus finds that the evidence is undisputed that appellant's work duties as a rural carrier included getting in and out of mail trucks and bending.<sup>13</sup>

As appellant has established factors of her federal employment, OWCP must base its decision on an analysis of the medical evidence. The case will therefore be remanded to OWCP to analyze and develop the medical evidence of record.<sup>14</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on the merits of this claim.

### **CONCLUSION**

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

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<sup>12</sup> *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>13</sup> *See J.S.*, Docket No. 19-0381 (issued July 16, 2019).

<sup>14</sup> *See D.K.*, Docket No. 17-0115 (issued June 1, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the March 25, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: March 4, 2020  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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