United States Department of Labor
Employees' Compensation Appeals Board

Q.T., Appellant	)	
and	)	**Docket No. 19-1693**
	)	**Issued: March 27, 2020**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Dallas, 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
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On June 11, 2019 appellant filed a timely appeal from a March 26, 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 to consider the merits of this case.[2]

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that following the March 26, 2019 decision, OWCP received additional evidence. 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on May 22, 2018, as alleged.

FACTUAL HISTORY

On May 30, 2018 appellant, then a 42-year-old program support assistant, filed a traumatic injury claim (Form CA-1) alleging that on May 22, 2018 he sustained a right hand injury when pushing a cart of food trays while in the performance of duty. On the reverse side of the claim form, the employing establishment controverted the claim. It asserted that the injury was not work related as appellant had first advised that he experienced right wrist pain on May 28, 2018, but he had worked from May 22 to 25, 2018 without complaint. The employing establishment further noted that there were no witnesses to the alleged May 22, 2018 employment incident and that it was inspecting the food cart to determine if any malfunctions existed.

In support of his claim, appellant submitted a May 31, 2018 report by Dr. Ruby Anthony-White, an internist, who noted appellant's complaints of pain and tenderness of the right wrist and hand following an unspecified May 22, 2018 injury. She checked a box marked "yes" indicating that the injury was work related and provided work restrictions. In a June 13, 2018 follow-up report, Dr. Anthony-White held appellant off work through June 19, 2018.

In a development letter dated June 21, 2018, 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. Appellant was afforded 30 days to submit the requested evidence.

In response, appellant submitted a June 18, 2018 report by Dr. Larry T. Johnson, a Board-certified orthopedic surgeon. Dr. Johnson noted a May 22, 2018 right hand and wrist injury due to "repetitive twisting and turning of the wrist and hand and pulling and pushing of food carts/trucks." He diagnosed Type 1 early complex regional pain syndrome (CRPS) of the right hand and wrist. Dr. Johnson prescribed physical therapy and restricted appellant to light-duty work.

By decision dated July 25, 2018, OWCP denied appellant's claim finding that the factual component of fact of injury had not been established. It found that, as he had not submitted answers to the questionnaire nor corroborating witness statements, the evidence was insufficient to establish that the employment incident occurred as alleged.

On August 22, 2018 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The telephonic hearing was held on January 9, 2019. During the hearing, appellant asserted that on May 22, 2018 he was assigned to deliver food trays in the medical center wards on overtime from 6:45 a.m. to 11:00 a.m., prior to the beginning of his regular tour of duty at 12:00 p.m. He indicated that he normally performed office tasks. Appellant recounted that he injured his right wrist while trying to stabilize the wheeled food tray cart during deliveries to multiple wards on floors 4c or 6c. He explained that as he was coming back towards the kitchen there were patients and other obstructions in the hallway and the cart's wheels were

going "all over the place" so he tried to stabilize the cart and somehow injured his wrist. Appellant further explained that he was about five feet five inches tall and the cart was taller than him and pretty heavy making it difficult to maneuver. He recalled that initially he did not take heed of an injury, but informed his subordinates that he had injured himself. Appellant explained that he had not filed a claim until May 30, 2018 as he believed his symptoms would improve, but they had worsened in the days following the incident. He submitted additional evidence.

In a May 29, 2018 report, Dr. Anthony-White provided work restrictions and recommended that appellant continue to wear a right wrist splint.

In a duty status report (Form CA-17) dated June 28, 2018, Dr. Johnson held appellant off work from June 26 to 28, 2018, and returned appellant to restricted duty as of June 29, 2018.

In his initial report dated July 11, 2018, Dr. Olayinka Ogunro, a Board-certified orthopedic surgeon specializing in hand surgery, noted under the heading of History of Present Illness, that appellant "injured his right palm as he was trying to stabilize a cart which was heavy and uncontrollable, there was a sudden thrust of the weight of the cart onto his right wrist with result of hyperextension." He diagnosed possible right wrist ligament tear and a triangular fibrocartilage complex (TFCC) tear.

In a July 26, 2018 follow-up examination, Dr. Ogunro restated his diagnoses of possible right wrist ligament tear and TFCC tear, however, he did not reference a mechanism of injury.

Dr. Ogunro, in a note of a subsequent encounter dated August 9, 2018, indicated a different mechanism of injury. He noted that appellant sustained an injury at work when "the wind blew the cart against his wrist." Dr. Ogunro's diagnoses indicated a TFCC tear in his right wrist.[3]

In reports dated January 8, 2018 and February 19, 2019, Dr. Ogunro again, under the heading of his "Assessment," repeated verbatim the mechanism of injury as "the wind blew the cart against his wrist".

By decision dated March 26, 2019, an OWCP hearing representative denied modification of OWCP's prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] 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

[3] Dr. Ogunro ordered a July 30, 2018 right wrist arthrogram which demonstrated a TFCC perforation and osteoarthritic changes. A May 21, 2019 magnetic resonance imaging (MRI) scan of the right wrist demonstrated a TFCC tear and scaphotrapezio-trapezoid (STT) osteoarthritis.

[4] *Supra* note 1.

time limitation of FECA,[5] 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.[6] 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.[7]

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.[8] First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.[9] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.[10]

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.[11] 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.[12]

ANALYSIS

The Board finds that appellant has met his burden of proof to establish an injury in the performance of duty on May 22, 2018, as alleged.

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[5] *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).

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

[7] *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).

[8] *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).

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

[10] *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 8.

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

[12] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *D.B., supra* note 9.

Appellant filed his traumatic injury claim on May 30, 2018 alleging that he sustained a right hand injury on May 22, 2018 due to pushing a cart of food trays. In his Form CA-1 he indicated that he hurt his right wrist while pushing a cart of trays.

In a June 18, 2018 report, Dr. Johnson noted appellant's account of injury as repetitive twisting and turning of the right wrist and hand while pushing and pulling a food tray cart.

In his July 11, 2018 initial encounter report, Dr. Ogunro described the injury under the heading History of Present Illness that appellant "injured his right palm as he was trying to stabilize a cart which was heavy and uncontrollable, there was a sudden thrust of the weight of the cart onto his right wrist with result of hyperextension." In subsequent reports, Dr. Ogunro inexplicably described a different mechanism of injury under the assessment portion of his report as "the wind blew the cart against his wrist," which appeared verbatim in subsequent reports after his report indicating this different mechanism of injury. During the January 9, 2019 hearing, appellant testified and consistently maintained that his right wrist injury was due to repeated attempts to stop the food tray cart from rolling on floors 4c or 6c as the cart was large and difficult to maneuver in the hallways back to the kitchen. Appellant's account of the incident is consistent as he has never indicated in any form or statement that his injury happened in any other manner than initially reported. Further, there was no mention of appellant ever being outside when the injury occurred. In fact, he explicitly testified that the incident happened on floor 4c or 6c which is safe to assume is indoors and wind free.

The Board finds that appellant has established the factual component of fact of injury as he has consistently described the employment incident as occurring on May 22, 2018 while pushing a cart of trays while in the performance of duty. As noted, 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 and persuasive evidence.[13]

As appellant has established that the May 22, 2018 employment incident occurred as alleged, further consideration of the medical evidence is necessary.[14] Therefore, the case will be remanded to OWCP to evaluate the medical evidence of record and determine whether he has met his burden of proof to establish a medical condition causally related to the accepted May 22, 2018 employment incident.[15] Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an injury in the performance of duty on May 22, 2018, as alleged.

[13] *Supra* note 12.

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

[15] *A.R.*, Docket No. 18-0924 (issued August 13, 2019); *Constance G. Patterson*, 41 ECAB 206 (1989).

ORDER

IT IS HEREBY ORDERED THAT the March 26, 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: March 27, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

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

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