United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 19-1275**
	)	**Issued: October 29, 2020**
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, Employee	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 20, 2019 appellant filed a timely appeal from a May 8, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] Appellant timely requested oral argument pursuant to section 501.5(b) of the Board's *Rules of Procedure*. 20 C.F.R. § 501.5(b). By order dated July 31, 2020, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed in a decision based on the case record. *Order Denying Request for Oral Argument*, Docket No. 19-1275 (issued July 31, 2020).

[2] 5 U.S.C. § 8101 *et seq.*

[3] The Board notes that, following the May 8, 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 her burden of proof to establish an injury in the performance of duty on April 1, 2019, as alleged.

FACTUAL HISTORY

On April 1, 2019 appellant, then a 44-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on that day she sustained neck, back, and leg injuries as the result of a police chase during which a car hit seven vehicles, including her postal vehicle, while in the performance of duty. She indicated that the incident occurred at 7:30 p.m., and that her regular work hours were from 8:00 a.m. to 4:50 p.m. Appellant did not stop work. Her supervisor acknowledged on the claim form that the alleged injury occurred in the performance of duty.

In a development letter dated April 5, 2019, OWCP noted the deficiencies in the evidence of record and advised appellant of the type of evidence necessary to establish the claim. It asked her to complete a questionnaire and provide further details regarding the circumstances regarding the claimed April 1, 2019 employment incident, including why the alleged injury occurred following appellant's regular work hours. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, OWCP received progress notes dated April 2, 2019, wherein Dr. Sherry J. Weinstein-Mayer, a Board-certified internist, diagnosed neck pain due to a motor vehicle accident. Physical examination findings were provided. Dr. Weinstein-Mayer noted that, at the time of the accident, the postal vehicle appellant was driving was hit by a vehicle being chased by police. In an accompanying verification of treatment, she noted that appellant received treatment that day and that she could return to work with restrictions on April 9, 2019.

Dr. Weinstein-Mayer, in an April 16, 2019 note, reported that appellant was seen on April 2, 2019 for injuries sustained from a motor vehicle accident. She diagnosed neck, low back, and bilateral leg pain, which she attributed to the motor vehicle accident. Physical therapy was recommended to treat the low back, neck, and bilateral leg pain. In an April 16, 2019 verification of treatment note, Dr. Weinstein-Mayer released appellant to return to work on April 22, 2019 with restrictions.

In reports dated April 23, 2019, Dr. Weinstein-Mayer noted that appellant was seen for injuries sustained as the result of an April 2, 2019 motor vehicle accident. Diagnoses included neck, low back, and bilateral leg pain. An April 23, 2019 verification of treatment noted that appellant received medical advice that day from Dr. G.G. Casserly, a specialist in internal medicine.

By decision dated May 8, 2019, OWCP denied appellant's claim, finding that she had not responded to the questionnaire and, thus, had not established that her injury occurred in the performance of duty, as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.[4]

LEGAL PRECEDENT

An employee seeking benefits under FECA[5] 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,[6] that an injury was sustained in the performance of duty, as alleged,[7] and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[8] 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.[9]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established.[10] Fact of injury consists of two components that must be considered in conjunction with one another. The first

[4] The Board notes that, by decision dated July 5, 2019, OWCP denied appellant's request for an oral hearing before an OWCP hearing representative. However, appellant had filed the current appeal to the Board on May 20, 2019, prior to the issuance of the July 5, 2019 decision. The Board notes that, as OWCP issued its July 5, 2019 decision during the pendency of this appeal that decision is null and void as the Board and OWCP may not simultaneously have jurisdiction over the same issue. *See Terry L. Smith*, 51 ECAB 182 (1999); *Arlonia B. Taylor*, 44 ECAB 591 (1993); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

[5] *Supra* note 2.

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

[7] The phrase sustained while in the performance of duty in FECA is regarded as the equivalent of the commonly found requisite in workers' compensation law of arising out of and in the course of employment. *See J.K.*, Docket No. 17-0756 (issued July 11, 2018). *Bernard D. Blum*, 1 ECAB 1 (1947). To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in the master's business, at a place where he or she may reasonably be expected to be in connection with the employment, and while he or she was reasonably fulfilling the duties of his or her employment or engaged in doing something incidental thereto. In deciding whether an injury is covered by FECA, the test is whether, under all the circumstances, a causal relationship exists between the employment itself or the conditions under which it is required to be performed and the resultant injury. *See R.E.*, Docket No. 18-0515 (issued February 18, 2020); *J.K., id.*

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

[9] *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).

[10] *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

component is whether the employee actually experienced the employment incident that allegedly occurred.[11] The second component is whether the employment incident caused a personal injury.[12]

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.[13] 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]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the claimed April 1, 2019 employment incident occurred in the performance of duty, as alleged.

Appellant's April 1, 2019 Form CA-1 alleged that she sustained neck, back, and leg injuries as the result of a motor vehicle accident which occurred at 7:30 p.m. that day when her postal vehicle was stuck as the result of a police chase while she was performing the duties of her position.

In medical reports dated April 2 to 23, 2019, Dr. Weinstein-Mayer indicated that she treated appellant for neck, low back, and bilateral leg pain due to a motor vehicle accident. The doctor described the accident as occurring when the postal vehicle appellant was driving was hit by a vehicle being chased by the police.

Appellant's description of the incident is not contradicted by her medical reports or any other evidence of record. She contended that her injury occurred at 7:30 p.m. when a police chase resulted in a car hitting seven cars including her postal delivery vehicle. Moreover, she contemporaneously sought medical treatment after the claimed employment incident. The employing establishment does not dispute that the incident occurred and on the reverse side of appellant's Form CA-1 acknowledged that appellant was injured in the performance of duty. 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 her claim.[15] The Board has also found that the employing establishment's acknowledgment that the injury occurred in the performance of duty is sufficient, if consistent with the surrounding facts

[11] *See M.F.*, Docket No. 18-1162 (issued April 9, 2019); *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143(1989).

[12] *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[13] *See M.F., supra* note 11; *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[14] *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

[15] *Supra* note 13.

and circumstances, to establish that the incident occurred, as alleged, and in the performance of duty.[16] Thus, the Board finds that given the above-referenced evidence, appellant has established with specificity that the incident occurred at the time, place, and in the manner alleged, and in the performance of duty.[17]

As appellant has established that the April 1, 2019 employment incident occurred in the performance of duty, the issue is thus whether this accepted incident caused an injury.[18] The Board will, therefore, set aside OWCP's May 8, 2019 decision and remand the case for consideration of the medical evidence. Following this and such other further development as may be deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish a diagnosed medical condition causally related to the accepted employment incident.[19]

CONCLUSION

The Board finds that appellant has established that the April 1, 2019 employment incident occurred in the performance of duty, as alleged. The Board further finds that the case is not in posture for decision with regard to whether appellant has established an injury causally related to the accepted employment incident.

[16] *D.M.*, Docket No. 20-0314 (issued June 30, 2020).

[17] *Id.*; *see also D.R.*, Docket No. 19-0072 (issued June 24, 2019).

[18] *D.M.*, *supra* note 16*; A.D.*, Docket No. 17-1855 (issued February 26, 2018); *T.H.*, 59 ECAB 388 (2008).

[19] *Id.*

ORDER

IT IS HEREBY ORDERED THAT the May 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: October 29, 2020
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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