



## **FACTUAL HISTORY**

On April 8, 2020 appellant, then a 54-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on March 30, 2020 she injured her low back when she slipped backward down a customer's accessibility ramp while in the performance of duty. She did not immediately stop work. On the reverse side of the claim form appellant's supervisor, M.H., acknowledged that appellant was injured in the performance of duty. However, he indicated that his knowledge of the facts did not agree with her statements. M.H. noted that appellant could have easily accessed the mailbox using the steps provided at the house. He noted that appellant had previous safety issues and was being observed to prevent further injuries. M.H. further indicated that this injury coincided with her plans to retire.

Appellant was treated by Dr. Ravindra Goel, a Board-certified family practitioner, on April 7, 2020, for low back pain and spasm. She reported working for the employing establishment and had an accident on March 30, 2020. Appellant's history was significant for a previous back injury for which she sought treatment. Dr. Goel diagnosed contusion of the lower back and pelvis, subsequent encounter and returned appellant to restricted duty.

The employing establishment submitted an undated statement from appellant's supervisor, M.H., who reiterated his statements made on the notice of traumatic injury claim form.

In a development letter dated April 13, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Dr. Raymond E. Dennie, a specialist in orthopedics, treated appellant on March 31, 2020 for low back pain. He related that appellant reported having a slip and fall accident the prior day and that she landed flat on her back. She noted constant pressure and pain when standing or walking. Dr. Dennie noted limited range of motion of the lumbar spine. He diagnosed contusion/strain of the lumbar spine. Dr. Dennie returned appellant to light-duty work, with standing and walking restrictions on April 1, 2020.

Appellant underwent an x-ray of the lumbar spine on April 7, 2020, which revealed no abnormalities.

In a prescription note dated April 7, 2020, Dr. Goel diagnosed lumbar contusion and referred appellant for occupational therapy. In visit summaries dated April 7 and 29, 2020, he provided a work injury follow-up and diagnosed contusion of the low back and pelvis, subsequent encounter. Dr. Goel released appellant to restricted duty on April 7, 2020.

In an authorization request dated April 9, 2020, Dr. Goel diagnosed contusion of lower back and pelvis, subsequent encounter and requested authorization for occupational therapy.<sup>3</sup>

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<sup>3</sup> Appellant filed several claims for compensation (Form CA-7) for intermittent wage loss from May 14 through June 19, 2020.

In response to the development letter, appellant indicated that she used the occupant's accessibility ramp instead of steps because the customer did not have steps. She responded "N/A" to the question of whether she had similar disability or symptoms prior to the injury.

In return to work reports dated April 17 and 29, 2020, Dr. Goel diagnosed contusion of lower back and pelvis, subsequent encounter and returned appellant to sedentary duty on April 7, 2020. In a duty status report (Form CA-17) dated April 27, 2020, he diagnosed lumbar contusion. Dr. Goel checked a box marked "Yes" noting that the history of injury provided by appellant corresponded with his explanation of injury, noting that the carrier slipped down a customer's wheelchair ramp. He further responded "Yes" that the diagnosis was due to the injury and indicated that she could resume work with restrictions. In an April 29, 2020 report, Dr. Goel related treating appellant in follow-up for low back pain and spasm. Appellant reported working for the employing establishment and had an accident on March 30, 2020. Dr. Goel diagnosed contusion of the lower back and pelvis, subsequent encounter and continued restricted duty.

OWCP continued to receive medical evidence. Dr. John Mays, a Board-certified orthopedist, treated appellant on May 22, 2020 for low back and knee pain and muscle spasms. Appellant reported that on March 29, 2020 she was walking down an accessibility ramp while working, when she slipped and fell, landing on her back. She was subsequently treated at a medical facility and underwent x-rays. In a June 19, 2020 authorization request, Dr. Mays requested a magnetic resonance imaging (MRI) scan of the lumbar spine. He noted a March 30, 2020 date of injury and diagnosed lumbar spine herniated disc.

By decision dated June 23, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as described.

### **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 period 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>

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<sup>4</sup> *Supra* note 1.

<sup>5</sup> *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).

<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> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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.<sup>8</sup> Fact of injury consists of two components that must be considered in conjunction with one another. 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.<sup>9</sup> Second, the employee must submit sufficient medical evidence to establish that the employment incident caused a personal injury.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the claimed March 30, 2020 employment incident occurred in the performance of duty, as alleged.

The record establishes that on March 30, 2020 appellant was delivering mail at a customer's residence when she slipped and fell on an accessibility ramp. Appellant's supervisor, M.H., noted on the reverse side of the Form CA-1 that her injury occurred in the performance of duty. Although he noted that appellant did not access the mailbox using the steps provided he did not refute that she slipped as alleged on March 30, 2020. Additionally, appellant sought prompt medical care the next day with Dr. Dennie on March 31, 2020 and reported having a slip and fall accident the prior day, landing on her back. Dr. Dennie diagnosed contusion/strain of the lumbar

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<sup>8</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>9</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

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

<sup>12</sup> *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

<sup>13</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

spine. Similarly, Dr. Mays noted in a report dated May 22, 2020, that while at work appellant was walking down a handicap ramp and slipped and fell on her back.<sup>14</sup>

The injuries appellant claimed are consistent with the facts and circumstances she set forth, the statement from her supervisor, her course of action, and the medical evidence she submitted. As noted above, the 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.<sup>15</sup> 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.<sup>16</sup> The Board thus finds that appellant has met her burden of proof to establish that the March 30, 2020 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the March 30, 2020 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.<sup>17</sup> While OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's June 23, 2020 decision and remand the case for consideration of the medical evidence of record.<sup>18</sup> After 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 medical condition causally related to the accepted March 30, 2020 employment incident.

### **CONCLUSION**

The Board finds that appellant has met her burden of proof to establish that the March 30, 2020 employment incident occurred in the performance of duty, as alleged. The Board further finds that the case is not in posture for decision regarding whether she has established an injury causally related to the accepted March 30, 2020 employment incident.

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<sup>14</sup> Although Dr. Mays originally noted a date of injury of March 29, 2020, in a subsequent authorization request he noted a date of injury of March 30, 2020.

<sup>15</sup> *Supra* note 11.

<sup>16</sup> *See supra* note 13.

<sup>17</sup> *See M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

<sup>18</sup> *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the June 23, 2020 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: April 30, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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