United States Department of Labor
Employees' Compensation Appeals Board

S.V., Appellant	)	
and	)	**Docket No. 21-0027**
	)	**Issued: April 29, 2021**
U.S. POSTAL SERVICE, ARIZONA PERFORMANCE CLUSTER, Phoenix, AZ, 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
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On October 8, 2020 appellant filed a timely appeal from July 27 and September 23, 2020 merit decisions 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 over the merits of this case.[2]

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty on June 6, 2020, as alleged.

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that, following the September 23, 2020 decision, OWCP received additional evidence. 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.*

FACTUAL HISTORY

On June 22, 2020 appellant, then a 32-year-old custodian, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2020, as the only custodian on duty, she sustained a lower back injury as a result of mopping many rooms while in the performance of duty. On the reverse side of the claim form, P.B., an employing establishment supervisor, controverted the claim noting that appellant requested sick leave on June 11, 2020, but did not mention a work injury and that appellant would not have mopped continuously for four hours, as alleged. Appellant did not stop work.

In a June 12, 2020 work activity status report, Diane C. Allen, a nurse practitioner, diagnosed a strain of the muscle, fascia, and tendon of the lower back and muscle spasm of the back. She noted a date of injury of June 6, 2020 and recommended work restrictions of lifting up to 10 pounds constantly; pushing and pulling up to 20 pounds constantly; and occasional mopping. Appellant underwent several physical therapy sessions, and, on June 24, 2020, Ms. Allen released her to full-duty work.

In a June 26, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested additional information from the employing establishment. It afforded both parties 30 days to respond.

Thereafter, OWCP received a return to work slip bearing an illegible signature indicating that appellant was seen by a medical provider on June 11, 2020.

In a report dated June 12, 2020, Ms. Allen noted that appellant related a history of lower back pain following an injury on June 6, 2020 which she attributed to mopping over the course of four hours. She performed a physical examination and documented painful extension of the lumbosacral spine. Ms. Allen diagnosed a lumbar strain and muscle spasm of the back and prescribed medication and physical therapy.

In a follow-up visit on June 16, 2020, Ms. Allen noted that appellant reported her pain was improving with stretching, but that she continued to have difficulty bending down. On June 30, 2020 she noted that appellant felt well enough to be released from care. In a duty status report (Form CA-17) of even date, Dr. Alfred C. Emmel, an occupational medicine specialist, diagnosed lumbar strain and muscle spasm and opined that the injury occurred due to mopping continuously for four hours.

By decision dated July 27, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred as alleged. Consequently, it found that appellant had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence. In an undated response to OWCP's development questionnaire, appellant indicated that on June 6, 2020 she performed an excessive amount of mopping, and, while doing so, was swaying her hips from side to side which caused movement of her lower back. She noted that she mopped for four to five hours that day, and during the last hour

of her shift, her lower back started to hurt. Appellant was scheduled to be off work for the next two days, and hoped her pain would subside, but it worsened. She told her supervisor about her lower back pain on June 12, 2020, because the pain was not improving. Appellant noted that she sought treatment that day and was referred to physical therapy, prescribed a muscle relaxer and given lower back exercises. She denied engaging in any activity outside of work that would have caused her injury.

Physical therapy encounter notes dated June 12 through 26, 2020 document that appellant's back pain improved over time. In an encounter note dated June 30, 2020, Dr. Emmel found appellant had reached maximum medical improvement.

On August 17, 2020 appellant requested reconsideration.

In a letter of controversion dated September 14, 2020, the employing establishment alleged that appellant did not report the injury on the day that it occurred, but that she had requested personal time off from work during the period of time between when she was injured and when she reported the incident to her supervisor. It suggested that she could have injured herself outside of work and also asserted that she would not have needed four hours to mop the building, because it was not very large. The employing establishment further noted that appellant would not have mopped continuously, because she took frequent breaks.

By decision dated September 23, 2020, OWCP denied modification of its prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] has the burden of proof to establish the essential elements of his or her claim, including 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 first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the

[3] *Supra* note 1.

[4] *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[5] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

time, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.[7]

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[8] In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[9]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the June 6, 2020 employment incident occurred while in the performance of duty, as alleged.

Appellant indicated in her June 22, 2020 claim form that she sustained a low back injury, as the only custodian on duty, while mopping many rooms on June 6, 2020 while in the performance of duty. In her subsequent response to OWCP's development questionnaire, she reiterated that she injured her back on June 6, 2020 as a result of repetitive swaying motions while mopping for four to five hours. As noted above, 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.[10]

Moreover, appellant submitted medical evidence by way of a June 12, 2020 medical report and Dr. Emmel's June 30, 2020 Form CA-17 that confirmed the history of injury as a lower back injury at work on June 6, 2020 while mopping. The remaining medical reports also provide a consistent history of an employment injury on June 6, 2020 with clinical findings and a diagnosis of lumbar strain and low back muscle spasms.

The Board therefore finds that, based on appellant's statements and the medical evidence of record, she has met her burden of proof to establish that the June 6, 2020 employment incident occurred in the performance of duty, as alleged.[11]

As appellant has established that the June 6, 2020 employment incident occurred as alleged, the question becomes whether this incident caused an injury.[12] Thus, the Board will set aside OWCP's July 27 and September 23, 2020 decisions and remand the case for consideration

[7] *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *S.W.*, Docket No. 17-0261(issued May 24, 2017).

[9] *Betty J. Smith*, 54 ECAB 174 (2002).

[10] *S.A.*, Docket No. 19-1221 (issued June 9, 2020).

[11] *J.C.*, Docket No. 18-1803 (issued April 19, 2019); *M.C., id.*; *M.M.*, Docket No. 17-1522 (April 25, 2018).

[12] *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *A.C.*, Docket No. 18-1567 (issued April 9, 2019).

of the medical evidence.[13] 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 diagnosed medical condition causally related to the accepted June 6, 2020 employment incident and any attendant disability.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the June 6, 2020 employment incident occurred in the performance of duty, as alleged. The Board further finds that this case is not in posture for decision with regard to whether she has established an injury causally related to the accepted June 6, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 23 and July 27, 2020 decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: April 29, 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

[13] *W.R.*, Docket No. 17-0287 (issued June 8, 2018).