

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

G.E., Appellant	)	
	)	
and	)	<b>Docket No. 20-1081</b>
	)	<b>Issued: January 26, 2021</b>
<b>SOCIAL SECURITY ADMINISTRATION,</b>	)	
<b>Wisconsin Rapids, WI, Employer</b>	)	
	)	

*Appearances:*  
Alan J. Shapiro, Esq., for the appellant<sup>1</sup>  
Office of Solicitor, for the Director

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On April 27, 2020 appellant, through counsel, filed a timely appeal from a December 16, 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 March 25, 2019 appellant, then a 65-year-old operations supervisor, filed a traumatic injury claim (Form CA-1) alleging that on March 23, 2018 at 7:10 a.m., she sustained injuries to her hands, wrists, left elbow, and left shoulder when she tripped on either a mat or a chair and fell while in the performance of duty. On the reverse side of the claim form, a supervisor with the employing establishment checked boxes marked “Yes” acknowledging appellant was injured while in the performance of duty and that the facts about the injury agreed with statements from appellant or witnesses. Appellant did not stop working.

In a development letter dated April 10, 2019, OWCP informed appellant that it had not received any evidence in support of her claim. It advised of the deficiencies of her claim and instructed her as to the type of medical evidence necessary to establish her claim. OWCP requested that appellant provide a narrative report from her physician, explaining how the reported incident caused or aggravated her medical condition. It afforded her 30 days to respond.

OWCP received work restrictions notes dated March 28 and April 5, 2019.

In a March 28, 2019 medical report, Dr. James A. Wilkes, a Board-certified orthopedic surgeon, noted that appellant presented with bilateral shoulder pain after sustaining an injury at work on March 23, 2019 when her toe got caught on the rug or on the corner of a chair, causing her to fall forward onto her hand and jam her shoulders. Appellant described her pain as burning, stabbing, dull, throbbing, aching, and sharp. She indicated that her pain was constant and increased when sleeping on her shoulder. Dr. Wilkes conducted a physical examination and reviewed appellant’s bilateral shoulder x-rays, which revealed normal alignment and no fracture. He diagnosed bilateral shoulder pain.

In his April 5, 2019 medical report, Dr. Wilkes reiterated his diagnosis of bilateral shoulder pain.

OWCP also received an April 5, 2019 occupational therapy prescription slip from an unidentifiable healthcare provider.

In an undated authorization for examination and/or treatment (Form CA-16), the employing establishment authorized appellant to seek medical care for a hand, wrist, and shoulder injury. The date of injury was listed as March 13, 2019. In an attending physician’s report, Part B of the Form (CA-16), dated April 26, 2019, Dr. Wilkes advised that appellant caught her foot on a rug or chair and fell. He diagnosed bilateral shoulder pain. Dr. Wilkes prescribed therapy and an anti-inflammatory. By decision dated May 9, 2019, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish that the March 23, 2018 employment incident occurred as alleged or that she sustained a diagnosed medical condition. It

concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

In an undated letter, appellant clarified that her injury actually occurred on March 23, 2019, not March 23, 2018 as shown in her original Form CA-1. She also resubmitted the first page of the Form CA-1, which was identical to the original Form CA-1, except that it indicated that March 23, 2019 was the date of injury.

On October 1, 2019 appellant requested reconsideration. In an attached September 5, 2019 letter, she indicated that her date of injury was incorrectly stated in her initial Form CA-1. Appellant reiterated that her injury occurred on March 23, 2019 and explained that she did not have medical evidence at the time of filing her claim because she had not seen a physician.

Appellant's daughter, in an undated statement, alleged that on the date of injury her mother informed her that she fell and hurt her arms at work that day. She indicated that appellant had bruising on her arms and elbows from the fall, and her pain did not improve over the weekend. Appellant's daughter explained that her mother had continued to work despite her pain because her manager was out of the office for an extended period.

Appellant underwent occupational therapy treatments from April 16 through May 23, 2019. In an April 9, 2019 occupational therapy evaluation report, Kasey L. Fancher, an occupational therapist, noted that appellant fell at work after tripping over a rug and landed on her outstretched hands, causing bilateral shoulder pain.

In a May 7, 2019 medical report, Dr. Wilkes indicated that appellant presented with shoulder pain on the left shoulder joint and noted her date of injury as March 23, 2019. He diagnosed left shoulder pain and ordered a magnetic resonance imaging (MRI) scan of the left shoulder.

In a May 15, 2019 witness statement, W.M., appellant's coworker, asserted that around 7:00 a.m. on March 23, 2019, she and other coworkers heard a sound from the front reception area of the office. She noted that no one saw what happened, but everyone assumed that appellant was doing something in the area. W.M. reported that appellant subsequently approached her desk and notified her that she had taken a bad fall in the reception area. Appellant showed her bruised hands and wrists to W.M. and other coworkers. She also informed W.M. that she hit her left shoulder "pretty hard" on the floor. W.M. suggested that appellant seek immediate medical assistance.

A May 28, 2019 MRI scan of the left shoulder revealed high-grade partial thickness tearing of the supraspinatus and infraspinatus tendons with a suspected full-thickness component of the distal supraspinatus tendon, atrophy of the teres minor muscle, an anterior labral tear, as well as glenohumeral joint and subacromial/subdeltoid bursal fluid.

In a May 31, 2019 medical report, Dr. Wilkes indicated that appellant was following up on left shoulder pain and limited range of motion that she experienced for two months since her fall. He reviewed the MRI scan of appellant's left shoulder and diagnosed strain of muscle(s) and tendon(s) of the rotator cuff of the left shoulder.

By decision dated December 16, 2019, OWCP denied modification of the May 9, 2019 decision, finding that the evidence of record was insufficient to establish that the employment incident occurred as alleged.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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,<sup>4</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>5</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>6</sup>

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 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.<sup>7</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>8</sup> The employee has not met his or her burden of proof of 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. 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 serious doubt on an employee's statements in determining whether a case has been established. An employee's statement alleging that an

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<sup>3</sup> *Supra* note 2.

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

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>

### ANALYSIS

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

Appellant initially filed a Form CA-1 on March 25, 2019, alleging that she had sustained injuries on March 23, 2018 when she tripped on a mat or a chair at approximately 7:10 a.m. On the reverse side of the Form CA-1, a supervisor with the employing establishment indicated, by checking boxes marked “Yes,” that she was injured while in the performance of duty and that the facts of the injury were consistent with her and witness statements. Following OWCP’s initial denial of the claim, appellant, in an undated letter received by OWCP on May 13, 2019, clarified that her injury actually occurred on March 23, 2019, not March 23, 2018. She resubmitted the first page of the Form CA-1, which now indicated that March 23, 2019 was the date of injury. In her request for reconsideration, appellant again clarified her date of injury, explaining that her date of injury was incorrectly stated in her initial Form CA-1. In a May 15, 2019 witness statement, appellant’s coworker also attested that appellant notified her on March 23, 2019 that she fell earlier that day and showed her bruised hands and wrists. She stated that she and other coworkers heard a sound earlier in the reception area, where appellant allegedly fell.

The Board finds that appellant established that the employment incident occurred as alleged, on March 23, 2019. The May 15, 2019 witness statement, coupled with Dr. Wilkes’ medical reports dated March 28, and May 7 and 31, 2019, which consistently indicated that appellant’s date of injury was March 23, 2019, as well as appellant’s subsequent clarification establish that the alleged incident occurred on March 23, 2019. Moreover, appellant has provided a single account of the mechanism of injury that has not been refuted by any evidence in the record.<sup>10</sup> As noted above, a claimant’s statement that an injury occurred at a given time and place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup> Furthermore, the Board notes that the employing establishment executed an Authorization for Medical Treatment (Form CA-16) indicating a date of injury of March 23, 2019 for hand, wrist and shoulder injuries. The Board therefore finds that appellant has established that the March 23, 2019 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the March 23, 2019 employment incident factually occurred in the performance of duty, the question becomes whether this incident caused her diagnosed conditions.<sup>12</sup> The Board will therefore remand the case for consideration of the medical evidence on the issue of causal relationship. Following such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden

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<sup>9</sup> See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>10</sup> *B.S.*, Docket No. 19-0524 (issued August 8, 2019).

<sup>11</sup> See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>12</sup> See *G.G.*, Docket No. 19-0490 (issued October 3, 2019).

of proof to establish an injury causally related to the accepted March 23, 2019 employment incident.<sup>13</sup>

**CONCLUSION**

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

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 16, 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: January 26, 2021  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>13</sup> The Board notes that the employing establishment issued appellant a signed authorization for examination and/or treatment (Form CA-16) authorizing medical treatment. The Board has held that where an employing establishment properly executes a CA-16 form, which authorizes medical treatment as a result of an employee's claim for an employment-related injury, it creates a contractual obligation which does not involve the employee directly to pay the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. §§ 10.300 and 10.304; *R. W.*, Docket No. 18-0894 (issued December 4, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).