

ISSUE

The issue is whether appellant has met her burden of proof to establish a right shoulder injury in the performance of duty on June 21, 2019, as alleged.

FACTUAL HISTORY

On July 1, 2019 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 21, 2019 at 11:00 a.m. she injured her right shoulder while in the performance of duty. She explained that, to avoid falling, she grabbed a handrail and pulled her right shoulder. Appellant stopped work on the date of injury.

In a development letter dated July 8, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion, seeking a full description of the events and circumstances surrounding the alleged June 21, 2019 employment incident. OWCP afforded appellant 30 days to provide the necessary information.

Appellant submitted a June 24, 2019 medical report in which Dr. Eugene Stish, Board-certified in family medicine, diagnosed acute right shoulder pain. Dr. Stish reported that he had evaluated appellant for right shoulder pain that day and recommended that she remain out of work until further notice.

In an after visit summary of even date, Dr. Akash Patel, a Board-certified cardiologist, diagnosed acute right shoulder pain and provided an information sheet pertaining to arthralgia, or pain around the joint.

In a July 23, 2019 medical report, Dr. Marcos Martinez, a Board-certified orthopedic surgeon, diagnosed acute pain of the right shoulder, adhesive capsulitis of the right shoulder, and calcific tendinitis of the right shoulder and identified June 21, 2019 as the date of injury. He noted that on the alleged date of injury she was at work delivering mail when she slipped on some steps and grabbed the railing. Appellant felt immediate pain in her right shoulder afterwards. Dr. Martinez recommended that she undergo a magnetic resonance imaging (MRI) scan of her right shoulder for further evaluation and advised that she could return to work with modified duties.

In response to OWCP's development questionnaire, appellant submitted a July 23, 2019 statement in which she stated that she was handing out mail when she came down a loose step. To avoid falling, she grabbed a handrail with her right hand and felt a tear in her right shoulder. Appellant began to feel a lot of pain and after it became much stronger she was no longer able to carry mail. She then called her supervisor to explain what happened.

In a July 26, 2019 attending physician's report (Form CA-20), Dr. Martinez diagnosed calcific tendinitis of the right shoulder and adhesive capsulitis and checked a box marked "Yes" to indicate his belief that appellant's conditions were caused by the June 21, 2019 employment incident. In a work capacity evaluation musculoskeletal conditions form (Form OWCP-5c) of even date, he advised that she was able to work with restrictions and estimated that the restrictions would need to apply until August 2, 2019.

In a July 29, 2019 diagnostic report, Dr. John Dawsey, a Board-certified radiologist, performed a right shoulder MRI scan, finding mild tendinosis of the supraspinatus tendon, mild subacromial subdeltoid bursitis, and mild acromioclavicular joint degeneration.

In a July 31, 2019 letter, Dr. Martinez diagnosed right acute shoulder pain, right adhesive capsulitis, and right shoulder calcific tendinitis. He noted that on June 21, 2019 appellant was walking down the stairs, lost her balance on a loose step, and reached out to grab a handrail with her right hand to prevent herself from falling. Dr. Martinez explained that this caused a pulling and tugging motion on her right shoulder muscles. He opined that, within a reasonable degree of medical certainty, when appellant grabbed the handrail to prevent herself from falling it caused the muscles and tendons in her right shoulder to pull and overstretch to support her weight while falling. This act introduced trauma of the right shoulder which would not have occurred if not for the employment incident.

In an August 2, 2019 medical report, Dr. Martinez evaluated appellant's right shoulder injury after the alleged June 21, 2019 employment incident in which she slipped on a step while delivering mail and grabbed the railing to stop her fall. He discussed the results of her July 29, 2019 MRI scan and administered a glenohumeral cortisone injection to treat her symptoms. Dr. Martinez diagnosed acute pain of the right shoulder, adhesive capsulitis of the right shoulder, and calcific tendinitis of the right shoulder and indicated that appellant would begin physical therapy.

In an August 6, 2019 letter, the employing establishment controverted appellant's claim, stating that she was a 14-year employee with a low leave balance who previously called out of work on June 19 and 20, 2019. It recounted the events of the alleged June 21, 2019 employment incident as well as the events afterwards in which J.M., appellant's supervisor, asked her if she needed medical attention or wanted to file a claim and she replied "No" to both questions. The employing establishment also indicated that on July 20, 2019 V.N., a postmaster, observed appellant outside of work waving with her right arm and not using any type of sling. It asserted that the medical evidence that she submitted was insufficient to meet her claim.

The employing establishment attached a July 22, 2019 e-mail from V.N. in which she indicated that she observed appellant on July 20, 2019 speaking with two people. Appellant waved at her with her right arm, did not appear in distress, and was not wearing a sling on her right arm. V.N. attached what she purported to be a photo of the exchange in which appellant waved.

The employing establishment also attached an August 3, 2019 statement from J.M., in which he recounted the events of the alleged June 21, 2019 employment incident as well as the events that followed, including asking appellant if she needed medical attention or wanted to file a claim. J.M. noted that appellant replied "No" to both of his questions. Appellant called off work the next day and did not return for several days despite multiple telephone calls from the employing establishment. She eventually returned to work the next week with a physician's note stating that she would need to remain off work until she could be evaluated by a specialist.

An August 8, 2019 duty status report (Form CA-17) with an illegible signature diagnosed supraspinatus tendinitis and mild bursitis due to the alleged June 21, 2019 employment incident

during which she injured her right shoulder trying to catch herself to prevent a fall. It advised that she return to work on limited duty.

By decision dated August 16, 2019, OWCP denied appellant's claim finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It noted that she had not responded to its July 8, 2019 development questionnaire or otherwise provided information describing the alleged June 21, 2019 employment incident in detail.

OWCP continued to receive evidence. Appellant submitted treatment notes dated from August 12 to 21, 2019 in which Steven Clemson, a physical therapist, and John Ferdinand, a physical therapy assistant, noted that they had evaluated her for her right shoulder pain and adhesive capsulitis related to the alleged June 21, 2019 employment incident.

In an August 23, 2019 medical report, Dr. Martinez noted that he had reevaluated appellant for right shoulder pain related to the alleged June 21, 2019 employment incident. He reviewed her history of medical treatment for her injury and diagnosed adhesive capsulitis of the right shoulder, calcific tendinitis of the right shoulder, and right shoulder pain.

Appellant submitted treatment notes dated from August 27 to September 12, 2019 in which Joli Barkanic, a physical therapist, and Mr. Clemson provided an update of appellant's treatment related to her right shoulder conditions.

In medical reports dated from September 13, 2019 to January 7, 2020, Dr. Martinez recounted appellant's treatment for her adhesive capsulitis of the right shoulder and right shoulder pain related to the alleged June 21, 2019 employment incident. He updated her work restrictions and provided a new prescription for her physical therapy treatment.

In a January 13, 2020 letter, Dr. Martinez detailed his history of treatment of appellant for her right shoulder injury due to the alleged June 21, 2019 employment incident in which she lost her balance on a set of stairs and grabbed the railing with her right hand to prevent herself from falling. He provided a rationalized opinion in which he explained that the rotator sits below the AC joint providing support to the shoulder and that tension increases in the joint when the mobility of the joint is restricted. When appellant reached out and grabbed the handrail, it caused the muscles and tendons in her right shoulder to pull and overstretch to support her weight while falling. Dr. Martinez further explained that adhesive capsulitis, or "frozen shoulder," is known as a side effect after sustaining damage to the rotator cuff and results in decreased movement. He opined that when appellant fell and used her right arm to catch herself, it directly aggravated her preexisting calcific tendinitis and caused her to strain her rotator cuff and subsequent adhesive capsulitis, bursitis, and rotator cuff tendinitis.

On January 16, 2020 appellant requested reconsideration of OWCP's August 16, 2019 decision.

In a March 6, 2020 letter, the employing establishment again controverted appellant's claim, stating that there were inconsistencies in her account of her injury. It also opined that the fact that she waited three days to seek medical attention cast serious doubt on her claim.

By decision dated April 21, 2020, OWCP affirmed its August 16, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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 must first be determined whether fact of injury has been established.⁷ 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 and place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

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.¹⁰ 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.¹¹ An employee's

³ *Id.*

⁴ *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).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

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

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

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 her burden of proof to establish that the June 21, 2019 employment incident occurred in the performance of duty, as alleged.

On appellant's July 1, 2019 Form CA-1 she explained that, at 11:00 a.m. on June 21, 2019, to avoid falling, she grabbed a handrail and pulled her right shoulder.

As noted, an employee's statement alleging 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.¹³

Herein, appellant has consistently reported that on June 21, 2019 she slipped on a loose step while descending stairs and grabbed a handrail with her right hand to prevent herself from falling. She has also reported that she immediately experienced pain in her right shoulder as a result. Appellant submitted a detailed account of the June 21, 2019 employment incident in her July 23, 2019 response to OWCP's development questionnaire which is consistent with her claim form.

Additionally, appellant sought prompt medical care on June 24, 2019 when she notified Dr. Stish that she experienced pain in her right shoulder. Similarly, she submitted a series of medical reports from Dr. Martinez in which he provided medical care to her in relation to her right shoulder injury and the June 21, 2019 employment incident. In letters dated July 31, 2019 and January 13, 2020, Dr. Martinez detailed the events of the June 21, 2019 employment incident where appellant lost her balance on a set of stairs and grabbed the railing with her right hand in order to prevent herself from falling. He also provided a detailed discussion of her injury and related treatment as a result of the employment incident.

The history of the June 21, 2019 employment incident was confirmed by Drs. Stish and Martinez' medical reports which were for examination close in time with the incident. Further, while the employing establishment controverted appellant's claim, it did not dispute that the incident occurred and recounted the incident appellant had described. Therefore, the Board finds that this evidence establishes that the alleged June 21, 2019 employment incident occurred as alleged.¹⁴ Appellant has thus established the first component of fact of injury.¹⁵

¹² See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *Id.*

¹⁴ *J.C.*, Docket No. 18-1803 (issued April 19, 2019); *M.C.*, *supra* note 12; *M.M.*, Docket No. 17-1522 (April 25, 2018).

¹⁵ *J.C.*, *id.*

As appellant has established the claimed employment incident occurred as alleged, the question becomes whether this employment incident caused an injury.¹⁶ As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence. Thus, the Board will reverse OWCP's April 21, 2020 decision and remand the case for consideration of the medical evidence of record.¹⁷ 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 an injury causally related to the accepted occupational exposure.¹⁸

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the June 21, 2019 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 June 21, 2019 employment incident.

¹⁶ *Id.*

¹⁷ *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

¹⁸ *P.S.*, Docket No. 19-1818 (issued April 14, 2020).

ORDER

IT IS HEREBY ORDERED THAT the April 21, 2020 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 5, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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