United States Department of Labor
Employees' Compensation Appeals Board

T.A., Appellant	)	
and	)	**Docket No. 20-1284**
	)	**Issued: January 27, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Auburndale, MA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 8, 2020 appellant filed a timely appeal from a March 31, 2020 merit decision 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic incident occurred in the performance of duty on June 14, 2019, as alleged.

FACTUAL HISTORY

On July 12, 2019 appellant, then a 33-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that at 1:00 p.m. on June 14, 2019 she experienced upper back pain and a muscle-related back strain while lifting and using a satchel while in the performance of duty.

[1] 5 U.S.C. § 8101 *et seq.*

On the reverse side of the claim form her supervisor checked a box marked "No" to indicate his belief that she was not in the performance of duty and noted that she never reported her injury. Appellant stopped work on June 18, 2019.

In a June 18, 2019 medical note, Dr. Matthias Nurnberger, a Board-certified in internal medicine, noted that appellant was seen that day and recommended that she could return to work on June 25, 2019.

Dr. Dainius Juknelis, a Board-certified internist, opined in a June 25, 2019 medical note that appellant could return to full-duty work on July 2, 2019.

In a July 10, 2019 medical note, Dr. Prakash Bandari, Board-certified in internal medicine, recommended that appellant remain off work until July 17, 2019.

R.T., appellant's supervisor, controverted appellant's claim in a July 15, 2019 statement, arguing that there was no specification as to where her injury occurred on June 14, 2019. He provided that he completed a 3999 route review of her route for that day and claimed that she completed her route and did not appear to be in pain nor mention to be in pain at any point before she checked out of work. Appellant continued to work without mentioning an injury for an additional two days. She informed R.T. that she had a doctor's appointment on June 18, 2019 and needed to leave work during her shift. During a meeting concerning her extended absence from work on July 12, 2019, appellant reported that she injured her back on June 14, 2019.

In a July 16, 2019 statement, the employing establishment controverted appellant's claim, asserting that her medical documentation did not state that her injury was work related. It also challenged her claim based on fact of injury and indicated that management was observing her on June 14, 2019 during a 3999 route review.

In a July 17, 2019 duty status report (Form CA-17), Dr. Bandari diagnosed a heavy lifting injury due to lifting and using a satchel at work on June 14, 2019.[2] He also provided work restrictions. In an attending physician's report of even date, Dr. Bandari diagnosed lumbar back pain with no radiculopathy precipitated by heavy lifting and wearing a satchel on June 16, 2019. He checked a box marked "Yes" to indicate his opinion that appellant's condition was caused or aggravated by her federal employment.

In a July 23, 2019 medical note, Dr. Bandari diagnosed back pain and referred appellant to physical therapy for further treatment. In a separate note of even date, he recommended that she remain off work until further notice.

In a July 26, 2019 statement, appellant explained the events of the alleged June 14, 2019 employment incident in which she was assigned to a route that management would walk with her. She advised management that she would be unable to work the route because the use of a satchel would "kill" her back, but stated that she was forced to anyway. As she worked the route, appellant felt pressure on her back and around 1:00 p.m. the pain started to kick in, which caused her to inform her manager. She continued to work days after, but indicated that the pain in her back

[2] Dr. Bandari identified August 14, 2019 as the date of injury; however, this appears to be a typographical error.

continued to worsen. On June 18, 2019 appellant could not make it through the first few hours of her shift and called her doctor to make an appointment that same day. She informed her manager of her appointment and when she returned she claimed that he stated that he "can't just go by your words because you don't have notice." Appellant concluded by asserting that management never informed her that she needed to report her injury or of any forms that she needed to submit until July 12, 2019 when she called the Union Hall.

In a July 29, 2019 report, Michelle Marino, a physical therapist, evaluated appellant for low back pain as it related to the alleged June 14, 2019 employment incident and provided recommendations for her treatment for symptoms consistent with a thoracic-lumbar strain.

In a development letter dated July 30, 2019, OWCP advised appellant of the deficiencies of her claim and instructed her as to the factual and medical evidence necessary to establish her claim. It attached a questionnaire seeking a full description of the events and circumstances surrounding the alleged June 14, 2019 employment incident. OWCP afforded her 30 days to provide the necessary information.

In medical reports dated June 18 and 25, 2019, Drs. Nurnberger and Juknelis evaluated appellant for low back pain precipitated by heavy lifting and carrying a mail satchel at work and diagnosed acute bilateral thoracic back pain. In a June 25, 2019 medical note, Dr. Juknelis referred appellant to physical therapy.

Dr. Amogh Srivastava, a Board-certified radiologist, reported on June 26, 2019 that an x-ray scan of appellant's thoracic spine revealed no acute abnormality.

In medical reports dated from July 10 to August 2, 2019, Dr. Bandari evaluated appellant's back pain related to heavy lifting and wearing a satchel at work. He diagnosed musculoskeletal back pain from heavy lifting.

Dr. Bandari, in an August 6, 2019 Form CA-17, diagnosed a back strain and sacroiliac joint dysfunction due to the alleged June 14, 2019 employment incident where appellant lifted and used her satchel. He also provided work restrictions. In an attending physician's report (Form CA-20) of even date Dr. Bandari diagnosed a back sprain, sacroiliac joint dysfunction and bilateral thoracic pain. He checked a box marked "Yes" to indicate that appellant's conditions were caused or aggravated by her federal employment, and explained that they were caused by heavy lifting and carrying a satchel at work.

In a medical report of even date, Dr. Bandari recounted his history of treatment for bilateral thoracic pain and a back sprain, which appellant described as the result of heavy lifting at work. On evaluation he opined that it was clear that her back sprain, bilateral thoracic pain and sacroiliac joint dysfunction were precipitated by the heavy lifting and wearing of her satchel for long hours of the day at work.

In an August 7, 2019 medical note, Dr. Bandari advised that appellant be allowed to use a push cart to perform her work duties due to a sacroiliac joint injury and placed limitations on the amount of weight she was able to lift.

By decision dated August 30, 2019, 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 she described. It noted that she had not responded to its July 30, 2019 development questionnaire or provided information clarifying the alleged June 14, 2019 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On September 18, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review, which was held on January 15, 2020. She testified that on June 14, 2019 she requested that another employee be selected to go out on the route because the satchel made her back uncomfortable. While on the route, appellant claimed that her manager witnessed her constantly switch the side she carried her satchel on and that around 1:00 p.m. her back started to hurt badly. When they returned to the office, her supervisor stated that he could not stop appellant's work because she did not provide notice from a doctor. Appellant explained that she could not afford to miss work so she attempted to work through her pain for the next two days until she went to her doctor who advised that she not return to work. She informed her manager, but claimed that he never advised her that she could file a claim. Appellant also noted that she usually never used a satchel because it aggravated her back, but that she was required to carry one on her June 14, 2019 route with management. The hearing representative held the case record open for 30 days for the submission of additional evidence.

Appellant submitted reports dated from September 25 to October 7, 2019 in which Dr. Stephen Loughlin, a chiropractor, evaluated her for chronic pain in her neck and thoracic spine. Dr. Loughlin's assessment detailed a flare up of multiple chronic conditions and advised that she return at least three times a week for treatment. His remaining reports detailed the procedures utilized to treat appellant's conditions.

By decision dated March 31, 2020, OWCP's hearing representative affirmed OWCP's August 30, 2019 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 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

[3] *Supra* note 1.

[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).

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] Generally, 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.[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 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 a traumatic incident in the performance of duty on June 14, 2019, as alleged.

On appellant's July 12, 2019 Form CA-1 she explained that at 1:00 p.m. on June 14, 2019 she experienced upper back pain and a muscle-related back strain while lifting and carrying a satchel while in the performance of duty.

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

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

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 14, 2019 she experienced back pain while lifting and carrying a mail satchel while on her route. She submitted a detailed account of the employment incident in her July 26, 2019 statement wherein she explained that on June 14, 2019 she informed her manager that carrying a satchel would aggravate her back and that around 1:00 p.m. the pressure on her back from the satchel began to cause her pain. Appellant attempted to work through her pain until she left work on June 18, 2019 to attend a doctor's appointment. During the January 15, 2020 oral hearing, she again informed the hearing representative that she was required on June 14, 2019 to carry a satchel on her route and that at 1:00 p.m. she informed her manager that the satchel was causing her back pain.

Additionally, appellant submitted medical evidence from Dr. Bandari, which noted that she injured her back while carrying a satchel at work on June 14, 2019. Specifically, Dr. Bandari's August 6, 2019 Form CA-17 and Form CA-20, as well as his July 17, 2019 Form CA-17 all indicated June 14, 2019 as the date of injury in which she injured her back while carrying her satchel. Further, the July 29, 2019 evidence from her physical therapist also identified June 14, 2019 as the date of injury.

The history of the June 14, 2019 employment incident was confirmed by Dr. Bandari's medical evidence, which referred to the date of the employment incident. Further, while the employing establishment controverted appellant's claim, it failed to provide strong or persuasive evidence to refute her allegations.[14] Therefore, the Board finds that this evidence establishes that the alleged June 21, 2019 employment incident occurred as alleged.[15] Appellant has, thus, established the first component of fact of injury.[16]

As appellant has established the claimed employment incident occurred as alleged, the question becomes whether this employment incident caused an injury.[17] As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence. Thus, the Board will set aside OWCP's March 31, 2020 decision and remand the case for consideration of the medical evidence of record.[18] 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 June 14, 2019 employment incident.

[13] *Id*.

[14] *Supra* note 12.

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

[16] *J.C.*, *id*.

[17] *Id*.

[18] *C.H.*, Docket No. 19-1781 (issued November 13, 2020).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on June 14, 2019, as alleged. The Board further finds that the case is not in posture for decision regarding whether she has established a medical condition causally related to the June 14, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the March 31, 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: January 27, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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