United States Department of Labor
Employees' Compensation Appeals Board

L.H., Appellant	)	
and	)	**Docket No. 20-1391**
	)	**Issued: July 6, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Burlington, KY, 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 July 13, 2020, appellant filed a timely appeal from a February 12, 2020 merit decision and a June 24, 2020 nonmerit 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.[2]

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish an injury in the performance of duty on December 19, 2019, as alleged; and (2) whether OWCP properly

[1] 5 U.S.C. § 8101 *et seq.*

[2] The Board notes that appellant submitted additional evidence on appeal. 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.*

determined that appellant had abandoned her request for an oral hearing before an OWCP hearing representative.

FACTUAL HISTORY

On December 21, 2019 appellant, then a 51-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2019 she sustained a lower back and a right leg injury when she rearranged the contents of her long life vehicle (LLV) while in the performance of duty. On the reverse side of the claim form, L.P., an employing establishment supervisor, controverted the claim. She indicated that she had dropped off packages to appellant on the date of injury, but appellant made no complaints of back pain at that time. L.P. noted that appellant informed her later that day that her back was hurting. Appellant stopped work on the date of injury.

In a January 6, 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. OWCP also requested a narrative medical report from appellant's treating physician containing a detailed description of findings and a diagnosis, explaining how appellant's work activities caused, contributed to, or aggravated her medical conditions. It afforded appellant 30 days to submit the necessary evidence.

In a January 12, 2019 response to OWCP's development questionnaire, appellant indicated that on December 19, 2019 she was in the back of her postal vehicle arranging packages on a shelf. While in a crouched position, she was lifting a tray weighing approximately 35 pounds, which was heavier on one end. The tray's imbalance caused appellant to twist and jerk to prevent it from falling. She indicated that she sent a text message to her supervisor to request assistance on her route and to advise that she had hurt her back. Appellant noted that her supervisor was not in the post office when she returned from her route. She explained that she was scheduled off from work the following day, December 20, 2019, and attempted to rest. Appellant continued to have pain, and on December 21, 2019 filed an injury report and thereafter sought medical treatment. She initially contacted her family physician on December 23, 2019 and was referred to another medical group that was unable to see her without a claim number. Appellant then obtained an urgent care appointment on December 27, 2019 where she received a referral for an orthopedic evaluation.

A December 27, 2019 x-ray scan of the lumbar spine revealed no acute abnormality. In a December 29, 2019 medical note, Jordan McClure, a physician assistant, noted that appellant presented with ongoing pain in her lumbar and right hip. He assessed right hip joint pain and low back strain and referred her to orthopedics for further evaluation and treatment.

Dr. John Bartsch, a physical medicine and rehabilitation specialist, saw appellant on January 13, 2020. He noted complaints of low back and right hip pain which began when she lifted a tray that twisted and pulled her in an awkward motion while at work on December 19, 2019. Dr. Bartsch performed a physical examination and reviewed x-ray imaging of appellant's lumbar spine and right hip and pelvis, which revealed mild primary osteoarthritis of both hips. He diagnosed lumbar sprain/strain, prescribed physical therapy and a muscle relaxer, and provided work restrictions of no more than 10 pounds lifting, pushing, or pulling.

In a January 14, 2020 attending physician report (Form CA-20), Dr. Bartsch indicated that he first examined appellant on January 13, 2020. He reiterated that she sustained a lifting injury at work on December 19, 2019. Dr. Bartsch diagnosed lumbar strain and opined that appellant was partially disabled from January 13 to February 13, 2020. He found that she could return to light-duty work beginning January 13, 2020 with no lifting, pushing, or pulling over 10 pounds.

In an e-mail dated January 14, 2020, L.P. alleged that on December 21, 2019 she provided appellant with paperwork to seek medical attention at an urgent care or emergency room and directed appellant to return the completed paperwork that day. She indicated that, despite her instructions, appellant did not return with the paperwork and appellant did not respond to L.P.'s telephone call that night.

In a February 12, 2020 memorandum of telephone call (Form CA-110) an OWCP claims examiner contacted L.P. to inquire whether she received a text from appellant regarding the December 19, 2019 work injury. L.P. indicated that appellant reported that she did not feel well, but did not indicate that appellant injured herself.

By decision dated February 12, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred as alleged. It noted that her statements did not align with the supervisor's statements regarding the date that the injury was reported.

Dr. Bartsch reevaluated appellant on February 10, 2020 and noted that her pain was unchanged. On physical examination appellant was found to be tender on the belt line with tenderness to palpitation to insertion of the hip flexors and around the psoas tendon. Dr. Bartsch further noted that she had limited range of motion and pain, as well as a positive straight leg raise, bilaterally, and hip impingement on the right.

A duty status report (Form CA-17) dated February 12, 2020 from an unidentifiable healthcare provider noted ongoing restrictions and a diagnosis of lumbar sprain and strain.

On February 19, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

OWCP subsequently received an undated statement, wherein appellant indicated that she notified her supervisor *via* text message on December 19, 2019 that she hurt her back rearranging her LLV. Appellant noted that her supervisor brought her five to six tubs of packages while on her route and that she hurt her back further by bending over to organize the tubs. She alleged that her supervisor subsequently sent someone to deliver 15 minutes of her route. OWCP also received copies of text messages dated December 19, 2019 purportedly between appellant and her supervisor.[3]

In a May 4, 2020 notice, OWCP's hearing representative informed appellant that her oral hearing was scheduled for June 9, 2020 at 10:30 a.m. Eastern Standard Time (EST). OWCP

[3] The text messages contained in the case record are only partially legible.

provided a toll-free number and passcode for the hearing. It mailed the notice to appellant's last known address of record.

By notice dated May 8, 2020, OWCP informed appellant that it corrected the time for the June 9, 2020 telephonic hearing to 12:30 p.m. EST. It also provided her with a corrected toll-free telephone number and passcode. Appellant did not make an appearance and no request for postponement of the hearing was made.

By decision dated June 24, 2020, an OWCP hearing representative found that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance, but failed to appear. It further noted that there was no indication in the record that appellant had contacted the Branch of Hearings and Review either prior to, or subsequent to, the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[4] 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,[5] 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.[6] 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.[7]

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.[8]

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

[4] *Supra* note 1.

[5] *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).

[6] *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).

[7] *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).

[8] *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).

circumstances and his or her subsequent course of action.[9] 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 of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.[10]

ANALYSIS -- ISSUE 1

The Board finds that appellant has met her burden of proof to establish that the December 19, 2019 employment incident occurred while in the performance of duty, as alleged.

Appellant indicated in her December 21, 2019 claim form, and subsequent statements, that she sustained low back and right leg injuries on December 19, 2019 when she was lifting and rearranging packages and trays weighing up to 35 pounds in her LLV, which became imbalanced and caused her to twist and jerk to prevent them from falling. She also maintained that she reported her injury *via* text message to her supervisor on December 19, 2019. Although appellant's supervisor, L.P., indicated that appellant had not returned paperwork related to appellant's claimed injury on December 21, 2019 as instructed, she acknowledged on the reverse side of the claim form that although appellant made no mention of an injury when she dropped off packages to appellant on her route, but she indicated that appellant reported that her back was hurting later in the day on December 19, 2019. She further confirmed *via* a telephone call on February 12, 2020 with an OWCP claims representative that appellant text her on December 19, 2019 and reported that appellant did not feel well.

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.[11]

Moreover, Dr. Bartsch's January 13, 2019 medical report confirms the history of injury as appellant injuring her lower back and right hip at work on December 19, 2019 when she twisted and jerked her body in an awkward motion while trying to lift trays. His subsequent reports also provide a consistent history of an employment injury on December 19, 2019 with clinical findings and a diagnosis of lumbar strain and sprain.

The Board, therefore, finds that, based on her statements, the medical evidence of record, and L.P.'s statements, appellant has met her burden of proof to establish that the December 19, 2019 employing incident occurred in the performance of duty, as alleged.

As appellant has established that the December 19, 2019 employment incident occurred as alleged, the question becomes whether this incident caused an injury.[12] As OWCP found that she

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

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

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

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

had not established fact of injury, it did not analyze or develop the medical evidence.[13] Thus, the Board will set aside OWCP's February 12 and June 24, 2020 decisions and remand the case for consideration of the medical evidence.[14] 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 December 19, 2019 employment incident and any attendant disability.[15]

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the December 19, 2019 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 December 19, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the June 24 and February 12 and 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: July 6, 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] *Supra* note 8; *R.W.*, Docket No. 11-0362 (issued October 24, 2011).

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

[15] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.