

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

S.W., Appellant)	
)	
and)	Docket No. 20-1346
)	Issued: June 23, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Charlotte, NC, 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
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On June 24, 2020 appellant filed a timely appeal from an April 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 an occupational disease in the performance of duty, as alleged.

FACTUAL HISTORY

On February 28, 2020 appellant, then a 53-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging that she sustained pain in the lower back and thighs on February 3, 2020 and realized that her condition was caused or aggravated by her federal

¹ 5 U.S.C. § 8101 *et seq.*

employment on February 18, 2020. She explained that she was delivering mail and was walking back to her employing establishment vehicle when she noticed a dog nearby. When she twisted and turned around while backing up to retrieve her dog spray, appellant felt a sharp pain in her back and legs. She alleged that she called her supervisor, and continued to work, thinking the pain would stop. The employing establishment noted that appellant first reported the incident on February 18, 2020 and stopped work on that date.

OWCP received a statement from appellant on February 28, 2020. Appellant noted that on February 18, 2020 a dog startled her, she twisted, turned quickly, which aggravated her back and legs. She explained that, even though she had pain before, it was not to this extent. Appellant explained that on Monday, February 3, 2020 she woke up with severe back and leg pain, she went to work, cased her usual route, but was unable to deliver the mail. She indicated that she saw her doctor several times and received pain medication and on February 6, 2020 she was cleared to work with restrictions. Appellant noted that she returned to work for two days on light duty. She explained that her doctor requested five days of light duty, but her supervisor requested that she stay home after two days. Appellant noted that she saw her doctor on February 12, 2020, was cleared for work with no restrictions as of February 15, 2020, but since that date was a weekend day she was not scheduled to work, she returned to work February 18, 2020.

Dr. Shireesha Sangineni, a Board-certified family practitioner, completed a form report on February 19, 2020, which indicated that appellant would be unable to work from February 3 to 19, 2020 due to acute back pain. In a note dated February 27, 2020, she related that appellant was seen on February 19, 2020 for back pain, which was aggravated when she was chased by a dog on February 18, 2020.

In a letter dated March 3, 2020, the employing establishment controverted the claim and provided a February 28, 2020 letter from E.O., a supervisor, who noted that on February 18, 2020 appellant returned to work and was showing signs of pain and difficulty with movements, but her medical report showed no restrictions. E.O. indicated that at approximately 10:30 a.m. on February 18, 2020 appellant notified her that a “dog got after her and she ‘tweaked’ her back.” When asked if the dog attacked her, appellant responded, “No.” E.O. noted that appellant denied falling or being injured by the dog and that appellant responded that she had just come back to work from a back injury and she “[t]weaked” it and would “push through.” She indicated that when she advised appellant that she was not aware of the circumstances regarding the injury and asked if it had occurred at work, appellant responded, “no it happened outside work.”

In a March 4, 2020 development letter, OWCP informed appellant that the evidence of record was insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. The questionnaire requested that appellant describe in detail the employment duties, which she believed contributed to her condition and requested that she provide a physician’s opinion, supported by medical rationale, as to how those duties caused or aggravated her medical condition. OWCP afforded her 30 days to submit additional evidence and to respond to its inquiries. By a separate letter of even date, it also requested additional factual information from the employing establishment regarding the physical requirements of her employment duties.

In a March 12, 2020 statement, A.C., a supervisor, noted that appellant called out sick on the February 4 and 5, 2020 and when appellant reported to work on the February 7, 2020 she was walking “a little funny” and it seemed as if appellant was in pain and hunched over. She noted that when she asked appellant if everything was okay, appellant responded that she would be going a little slower than usual, but she could do the route. A.C. also recounted that appellant completed a PS Form 3971 on February 28, 2020, checking the box “off the job injury” as the reason for her incapacitation. She indicated that on February 18, 2020, when appellant reported for work, she noticed that appellant was walking as if she was in pain, but her doctor’s note had no restrictions. A.C. noted that appellant later called and notified the office that she tweaked her back when a dog came out of nowhere and scared her. She recounted that appellant later called to say that she would be unable to complete her route.

On March 24, 2020 appellant provided responses to OWCP’s questionnaire. She noted that on February 1, 2020 she delivered mail and that night, she started feeling pain in her back. Appellant explained that she thought about her day and she “did nothing out of the ordinary. The mail was not too bad and the packages were not too heavy. Sunday the pain was getting [worse].” Appellant related that on Monday morning the pain was also in her legs and she could hardly move. She noted that she cased mail, left work, went to the doctor, received medication, and was off work for a few days. Appellant related that she returned to work on February 7, 2020 and worked for four hours. On February 8, 2020 her supervisor informed her to stay home until she was better. Appellant noted that her doctor cleared her to return to work on February 15, 2020 with no restrictions and that she returned to work on February 18, 2020. She related that she was careful, cased her mail, loaded her truck with no problem, started delivering her route, and she was fine, until she was startled by a large dog and started twisting and turning around when she was backing up and reached for her dog spray. Appellant noted that the dog ran away when she sprayed it and she immediately felt pain in her back and legs. She related that she called her supervisor and notified the station manager. Appellant noted that her prior injury was not on the job and she believed she had a traumatic injury on the job “because if it wasn’t for that dog startling me causing me to twist and turn, I would not have reaggravated my back and leg pain.” She related that her job involved repetitive motion on a daily basis, which included walking, going up and down steps, twisting and grabbing mail, and setting and disengaging emergency brakes.

In a March 27, 2020 report, Dr. Sangineni advised that appellant reaggravated a prior back injury on February 18, 2020, when she was chased by a canine while delivering mail. She noted that appellant was seen on February 3, 2020 for the original back injury, and she was cleared to return to work on February 15, 2020.

OWCP received a March 20, 2017 duty status report (Form CA-17) signed by a physical therapist. The report noted that appellant had been chased by a dog on February 18, 2020.

In March 30, 2020 report, Dr. Jason Lowe, Board-certified in emergency medicine, related that appellant was seen for evaluation of right upper leg pain, which began in February after she was chased by a dog at work. He noted assessments of lumbago and right hip pain. In an April 1, 2020 report, Dr. Lowe noted that he saw appellant for follow-up treatment of her right posterior thigh complaints. He advised that her symptoms were acute and traumatic and began on February 18, 2020. Dr. Lowe noted that the “symptoms began as a result of [being] chased by a

dog while delivering mail.” He provided an assessment of right hip pain, lumbar spondylosis, and right hamstring strain.

By decision dated April 8, 2020, OWCP denied appellant’s claim, finding that the factual component of fact of injury, had not been established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² 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,³ 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.⁴ 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.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.⁶

An employee’s statement 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.⁷ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee’s statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain

² 5 U.S.C. § 8101 *et seq.*

³ *See C.H.*, Docket No. 19-1781 (issued November 13, 2020); *J.S.*, Docket No. 19-1392 (issued February 13, 2020); *S.D.*, Docket No. 19-1240 (issued December 11, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.S.*, *id.*; *T.W.*, Docket No. 18-0788 (issued July 22, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *Gary J. Watling*, 52 ECAB 278 (2001); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *J.S.*, *id.*; *T.W.*, *id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *S.D.*, *supra* note 3; *P.S.*, Docket No. 19-0549 (issued July 26, 2019).

⁷ *K.F.*, Docket No. 18-0485 (issued February 18, 2020); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁸

ANALYSIS

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

The Board notes that appellant claimed an occupational injury by filing a Form CA-2. However, the evidence of record alleges a traumatic injury, occurring during the course of a single workday or shift.⁹ Under the circumstances of the case, the Board finds that appellant is alleging a traumatic injury, occurring during a single workday.¹⁰

On her Form-CA-2 appellant noted that she had prior back and thigh pain; however, she alleged that on February 18, 2020 she felt a sharp pain in her back and legs when she twisted and turned to spray a dog that was circling her. In her narrative statement received on February 28, 2020, she again related that on February 18, 2020 a dog startled her and she aggravated her back and leg pain. Appellant indicated that she had pain before this incident, but not to this extent. In her March 24, 2020 response to OWCP's questionnaire, she explained that she started feeling pain in her back on February 1, 2020, that her doctor cleared her to return to work on February 15, 2020 with no restrictions, and that she returned to work on February 18, 2020, when she was startled by a large dog and felt pain in her back and legs. Appellant indicated that her prior injury was not on the job; however, she believed she had an injury on the job "because if it wasn't for that dog startling me causing me to twist and turn, I would not have reaggravated my back and leg pain."

A February 28, 2020 letter from E.O., a supervisor, noted that on February 18, 2020, appellant was showing signs of pain and difficulty with movements when she reported to work, however, at 10:30 that morning, appellant related that a "dog got after her and she 'tweaked' her back." In a March 12, 2020 statement, A.C., a supervisor, noted that when appellant reported for work on February 18, 2020, she noticed that appellant was walking as if she was in pain and that appellant called later and related that she tweaked her back when a dog scared her, and that appellant called a second time and related that she could not continue with her route.

The record contains several reports from treating physicians who noted that appellant related that she was chased by a dog on February 18, 2020. They include a March 27, 2020 report from Dr. Sangineni, who noted that appellant was chased by a canine while delivering mail on February 18, 2020. Dr. Sangineni opined that the February 18, 2020 incident reaggravated a preexisting back injury and explained that appellant originally was seen on February 3, 2020, for the original back injury. A March 20, 2017 Form CA-17 from a physical therapist with an illegible

⁸ *K.F., id.; D.R.*, Docket No. 19-0072 (issued June 24, 2019).

⁹ A traumatic injury is defined as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. 20 C.F.R. § 10.5(ee). An occupational disease is defined as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q).

¹⁰ *But see C.S.*, Docket No. 19-1809 (issued July 29, 2020). Appellant filed a claim for traumatic injury (Form CA-1); however, the Board found that appellant was alleging an occupational disease resulting from her work environment over a period longer than a single workday or shift.

signature noted that appellant related that she was chased by a dog on February 18, 2020. In a March 30, 2020 report, Dr. Lowe also noted that appellant related that her “symptoms began as a result of [being] chased by a dog while delivering mail.”

The Board finds that, while appellant has explained that she had prior symptoms, her description of the employment incident on February 18, 2020 is not contradicted by the employing establishment or by the medical reports of record. Appellant’s account of the alleged incident is consistent with the surrounding facts and circumstances and her subsequent course of action does not cast doubt on the validity of the claim. Thus, the Board finds that given the above-referenced evidence, she has alleged with specificity that the incident occurred at the time and place, and in the manner alleged.¹¹

As appellant has established that the February 18, 2020 employment incident occurred as alleged, the question becomes whether this incident caused a personal injury.¹² Thus, the Board will set aside OWCP’s April 8, 2020 decision and remand the case for consideration of the medical evidence. 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 an injury causally related to the accepted February 18, 2020 employment incident.

CONCLUSION

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

¹¹ *C.M.*, Docket No. 20-1519 (issued March 22, 2021).

¹² *See B.S.*, Docket No. 19-0524 (issued August 8, 2019); *Willie J. Clements*, 43 ECAB 244 (1991).

ORDER

IT IS HEREBY ORDERED THAT the April 8, 2020 decision of the Office of Workers' Compensation Programs is set aside and this case is remanded for further proceedings consistent with this decision of the Board.

Issued: June 23, 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