



## **FACTUAL HISTORY**

On August 24, 2020 appellant, then a 63-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 8, 2020 he injured his left shoulder when lifting a heavy parcel while in the performance of duty. On the reverse side of the claim form, appellant's supervisor affirmatively indicated that appellant was injured in the performance of duty, and that he stopped work on August 11, 2020.

In support of his claim, appellant submitted a report dated August 10, 2020 from Dr. Lulu Husain, a family medicine specialist. Dr. Husain related that on August 8, 2020 appellant lifted a heavy parcel and complained of left shoulder pain which he described as a throbbing pain which radiated to his left arm, elbow, hand, and scapula. She diagnosed left shoulder strain and noted that this resulted from lifting at work.

Appellant submitted a report dated August 25, 2020 from Nicholas Wesolowski, a physical therapist. Mr. Wesolowski related that appellant was diagnosed with left cervical radiculopathy and cervicgia following a work-related incident when lifting a box off of his mail truck. He noted that appellant had residual pain in his left shoulder and numbness down the left upper extremity to the fingers. In physical therapy notes dated August 25 and 27, 2020, Mr. Wesolowski detailed appellant's physical therapy sessions.

OWCP also received a physical therapy note dated August 28, 2020 from Kimberly O'Hare, a physical therapist, which detailed another physical therapy session.

In a development letter dated September 9, 2020, OWCP advised appellant that additional factual and medical evidence was necessary to establish his claim. It advised him of the type of factual and medical evidence needed and afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted physical therapy notes dated September 3 and 8, 2020 from Mr. Wesolowski and a physical therapy note dated September 4, 2020 from Ms. O'Hare.

By decision dated October 16, 2020, OWCP denied appellant's claim as fact of injury had not been established. It noted that appellant failed to provide a detailed statement establishing that the incident occurred as described. 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 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 FECA, that the claim was timely filed within the applicable time

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

limitation period 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 must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that 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 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.<sup>9</sup> 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.<sup>10</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish an incident in the performance of duty on August 8, 2020, as alleged.

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

<sup>9</sup> *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>10</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

OWCP denied appellant's traumatic injury claim, finding that he had not provided a detailed statement establishing that the events occurred as described.

As noted, an employee's statement alleging that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.<sup>11</sup> Appellant alleged that he sustained a left shoulder injury on August 8, 2020 while lifting a heavy box at work and the employing establishment filed an affirmative response that he was in the performance of duty when injured. Additionally, he sought medical care on August 10, 2020 with Dr. Husain, who diagnosed a left shoulder strain which occurred on August 8, 2020 after lifting a heavy parcel at work. Mr. Wesolowski's evaluation dated August 25, 2020 also indicated that appellant had a left shoulder injury from lifting at work. The injuries appellant claimed are consistent with the facts and circumstances he set forth, his actions, and the evidence he submitted. The Board, thus, finds that appellant has met his burden of proof to establish an employment incident in the performance of duty on August 8, 2020, as alleged.

As appellant has established that the August 8, 2020 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.<sup>12</sup> The Board will, therefore, set aside OWCP's October 16, 2020 merit decision and remand the case for consideration of the medical evidence of record.<sup>13</sup> After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish a medical condition causally related to the accepted employment incident.

### CONCLUSION

The Board finds that appellant has met his burden of proof to establish an incident in the performance of duty on August 8, 2020, as alleged. The Board further finds that the case is not in posture for decision regarding whether he has established an injury causally related to the accepted employment incident.

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<sup>11</sup> *See id.*

<sup>12</sup> *See M.H.*, Docket No. 20-0576 (issued August 6, 2020); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

<sup>13</sup> *A.B.*, Docket No. 20-1567 (issued April 30, 2021); *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 16, 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: June 16, 2021  
Washington, DC

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

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

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