

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

C.C., Appellant)	
)	
and)	Docket No. 20-1432
)	Issued: March 10, 2021
DEPARTMENT OF VETERANS AFFAIRS,)	
SHERIDAN VA MEDICAL CENTER,)	
Sheridan, WY, 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
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 24, 2020 appellant filed a timely appeal from a July 10, 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.²

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes evidence received after OWCP issued its July 10, 2020 decision. However, the Board's *Rules of Procedure* provide: 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.*

ISSUE

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

FACTUAL HISTORY

On May 11, 2020 appellant, then a 31-year-old nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that at 6:30 a.m. on May 9, 2020 she sustained an “incarcerated umbilical hernia, with back pain,” while in the performance of duty. She explained that she was in the breakroom getting a report from the night shift charge nurse when she stood up and “felt something funny above her belly button.” Thereafter, appellant sat with a patient until the pain became excruciating and she eventually had to visit the emergency room. She stopped work the same day. On the reverse side of the claim form K.K., a nurse manager for the employing establishment, checked a box marked “Yes” indicating that appellant was in the performance of duty when injured and that her knowledge of the facts surrounding the injury agreed with appellant and witness statements.

In a May 9, 2020 medical note, Dr. William Selde, Board-certified in emergency medicine, diagnosed an incarcerated umbilical hernia and back pain. He provided work restrictions and recommended that she be reevaluated in three to five days for surgery.

J.M., appellant’s coworker, submitted a May 12, 2020 statement wherein she reported that on May 9, 2020 at approximately 6:30 a.m. she observed appellant ask someone to take over her duties as her back was hurting and she needed to sit down. Appellant went to the breakroom for a few minutes and, when she returned, stated that she needed to go to the emergency room, noting that she stretched and felt her umbilical cord pop or stretch. J.M. felt her stomach and confirmed that she did feel an abnormal lump in her umbilical cord region. Another employee then volunteered to escort appellant to the emergency room to meet her husband.

In a May 13, 2020 statement, R.H., appellant’s coworker, explained that on May 9, 2020 someone informed him that appellant needed to go to the emergency room. When he went to check on her, he observed that she appeared to be in severe pain. R.H. volunteered to drive appellant to the hospital and noted her difficulty getting into the car and walking as they traveled.

In a medical report dated May 13, 2020, Dr. Barry Mangus, Board-certified in general surgery, evaluated appellant for an incarcerated hernia. He noted that she was moving a patient at work and felt a tear or pop in her abdominal wall followed by significant pain. After imaging study was performed, an incarcerated umbilical hernia was found and eventually reduced. Dr. Mangus diagnosed an epigastric hernia and recommended that appellant undergo an epigastric hernia repair to fully treat her condition. In a subsequent May 14, 2020 surgical report, he indicated that she underwent an epigastric hernia repair with mesh to treat her condition.

Appellant also submitted a position description of her duties as a nursing assistant.

In a development letter dated May 27, 2020, OWCP advised appellant that the evidence submitted was insufficient to establish that she actually experienced the incident alleged to have

caused the injury. It requested additional factual and medical evidence and provided a questionnaire seeking a full description of the events and circumstances surrounding the alleged May 9, 2020 employment incident. OWCP afforded appellant 30 days to provide the necessary information.

In a May 27, 2020 attending physician's report (Form CA-20), Dr. Mangus explained that on the date of her injury appellant was moving a patient when she felt a tear or pop in her abdominal wall followed by significant pain and difficulty breathing. He diagnosed an incarcerated epigastric hernia and checked a box marked "Yes" to indicate his opinion that her condition was caused or aggravated by her employment activity.

In a May 29, 2020 employing establishment work capacity evaluation form, Dr. Mangus provided a 20-pound work restriction regarding pushing, pulling, lifting, and carrying.

In a June 2, 2020 response to OWCP's development questionnaire, appellant explained that she was in the breakroom when she stood up and felt a pinch in her upper abdomen. As she was assisting a patient with getting out of bed, the pain in her upper abdomen became excruciating and immediately realized that she had developed a hernia. Appellant then walked into the breakroom, notified an on-duty nurse and was then sent to the emergency room. She described her symptoms as excruciating pain, difficulty breathing and nausea and also noted that she had never had any similar disability or symptoms.

In a June 16, 2020 letter, the employing establishment controverted appellant's claim arguing that she had not proven causal relationship.

By decision dated July 10, 2020, 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 found that her mechanism of injury of her alleged May 9, 2020 employment incident differed than that of her physician, Dr. Magnus. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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

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 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 an employment incident in the performance of duty on May 9, 2020, as alleged.

OWCP originally denied appellant's traumatic injury claim, finding that she provided an inconsistent mechanism of injury. It noted that she first indicated that the alleged May 9, 2020 employment incident involved her stretching and feeling a pop in her abdomen while the medical evidence she provided noted that she sustained her injury while moving a patient and feeling pain in her abdomen.

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, in her June 2, 2020 response to OWCP's development questionnaire, appellant clarified the events of the alleged May 9, 2020 employment incident. She first noted that at 6:30 a.m. she stood up in the breakroom and felt a pinch in her upper abdomen. As she continued to work, she assisted a patient with getting out of the bed and indicated that the pain in her abdomen became excruciating at that point. Additionally, J.M.'s May 12, 2020 statement confirmed that on the morning of the alleged incident appellant ceased her duties, came to the breakroom, and informed her that she had stretched funny and felt her umbilical cord pop or stretch. Moreover, appellant sought prompt medical care, first with Dr. Selde that same day where he diagnosed an incarcerated umbilical hernia. Dr. Mangus' subsequent May 13 and 27, 2020 medical evidence diagnosed an incarcerated epigastric hernia due to the alleged employment incident where appellant experienced pain in her abdomen after moving a patient.

The injuries appellant claimed are consistent with the facts and circumstances she set forth, statements from her coworkers, her course of action, and the medical evidence she submitted. Further, the history of the employment incident was confirmed by Drs. Selde's and Mangus' contemporaneous medical reports. While the employing establishment controverted appellant's claim, it did not dispute that the incident occurred and agreed that the event occurred in the manner in which she claimed. The Board thus finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on May 9, 2020, as alleged.

As appellant has established that the May 9, 2020 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁴ As OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's July 10, 2020 decision and remand the case for consideration of the medical evidence of record.¹⁵ 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 May 9, 2020 employment incident.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on May 9, 2020, as alleged.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the July 10, 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: March 10, 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