

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

C.M., Appellant)	
)	
and)	Docket No. 20-1519
)	Issued: March 22, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
San Diego, CA, 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 August 15, 2020 appellant filed a timely appeal from a February 24, 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

ISSUE

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

¹ 5 U.S.C. § 8101 *et seq.*

² The record provided to the Board includes evidence received after OWCP issued its February 24, 2020 decision. However, 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.*

FACTUAL HISTORY

On January 17, 2020 appellant, then a 43-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that at 12:00 p.m. on “January 14, 2020”³ He sustained an injury to the left side of his lower back when he got out of his work vehicle and felt a pop in his back while in the performance of duty. On the reverse side of the claim form appellant’s supervisor acknowledged that appellant was in the performance of duty when the alleged employment incident occurred. He contended, however, that at 3:15 p.m. on January 13, 2020 appellant walked into the office “with no issues, had a good conversation, and did not report any injury.” Appellant’s supervisor noted that appellant subsequently walked into the office the next day at 6:45 a.m. complaining of back pain. Appellant stopped work on January 14, 2020 and returned to work on January 17, 2020.

In a January 14, 2020 letter, D.M., appellant’s supervisor, controverted the claim, recounting that at approximately 6:45 a.m. on that date appellant approached her holding his lower back, wincing in pain and not walking fully upright. Appellant informed her that he had not slept all night and that he wanted to go to the emergency room due to pain he was experiencing in his lower back. D.M. asked appellant if his injury was job related and he informed her that at approximately 12:00 p.m. on January 13, 2020 he felt a pop in his lower back when he was getting out of his long-life vehicle (LLV). She then had him to complete the employee section of a Form CA-1 before he transported himself to the emergency room. D.M. later asked J.W., the closing supervisor, if appellant had complained about an injury the previous day. J.W. reported that, when appellant returned from his route on January 13, 2020, he seemed fine, in a good mood, walked upright, and showed no signs of being injured. D.M. contended that he did not sustain his back injury at work, reasoning that when someone feels a pop in their lower back the sensation of pain is automatic.

In a statement of even date, J.W. recounted that at 3:15 p.m. on January 13, 2020 appellant returned to the office after completing his route and seemed totally fine without showing signs of illness or injury. He stated that appellant seemed to be in a good mood and walked into the office without any visible pain.

In a January 14, 2020 medical report, Dr. Jeffrey White, Board-certified in family medicine, diagnosed low back pain and a sprain of the ligaments in the lumbar spine. He prescribed medication and provided work restrictions. In a duty status report (Form CA-17) of even date, Dr. White noted that on January 13, 2020 appellant felt a pop in his lower back when getting out of his LLV. He diagnosed a lumbar strain and recommended that appellant could return to work with restrictions. In an attending physician’s report (Form CA-20) of even date, Dr. White checked a box marked “Yes” to indicate his opinion that appellant’s condition was caused or aggravated by his employment activity.

In a January 15, 2020 statement, C.V., appellant’s coworker, explained that at approximately 6:45 a.m. on January 14, 2020 she observed appellant limping into the building.

³ The Board notes that this appears to be a typographical error as the remaining evidence of record indicates January 13, 2020 as the alleged date of injury.

She attempted to ask him what happened, but he just grimaced and kept limping towards the supervisor station.

In a January 22, 2020 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish his claim. It advised him of the factual and medical evidence necessary and also provided a questionnaire for completion. OWCP afforded appellant 30 days to respond.

On January 14, 2020 Gina Weaver, a physician assistant, noted that on January 13, 2020 he heard a pop in his lower back while getting out of his truck at work. She noted that he was experiencing pain in his lower back shooting down his left side. On evaluation Ms. Weaver diagnosed radicular low back pain and prescribed medication.

In a medical report dated January 14, 2020, Dr. White evaluated appellant for low back pain he had experienced since January 13, 2020 when he was getting out of his work vehicle and felt a pull of his left lower back. He noted that a January 14, 2020 x-ray scan of appellant's spine performed by Dr. Amjad Safvi, a Board-certified radiologist, revealed mild degenerative changes at L3-4 and L4-5. Dr. White diagnosed low back pain and a sprain of the ligaments in the lumbar spine.

In a January 17, 2020 medical report, Dr. Nathan Kiskila, Board-certified in family medicine, reevaluated appellant for low back pain he experienced since the alleged January 13, 2020 employment incident. He administered an injection to treat appellant's symptoms and diagnosed low back pain and a sprain of the ligaments of the spine. In a medical report of even date, Les Mershon, a physician assistant, diagnosed low back pain and a sprain of the ligaments of the lumbar spine and provided work restrictions.

In a January 26, 2020 report, Brian Jackson, a nurse practitioner, recounted the history of treatment appellant received for his low back pain and noted he first encountered pain during the alleged January 13, 2020 employment incident. He diagnosed low back pain and provided treatment instructions.

In a February 17, 2020 work status note, Dr. Kelsey Van Bokkem, Board-certified in family medicine, diagnosed low back pain and provided work restrictions.

On February 18, 2020 the employing establishment provided an offer of modified assignment (limited duty).

By decision dated February 24, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the employment incident occurred as he described. It noted that his Form CA-1 claimed January 14, 2020 was the date of injury, but the medical evidence of record referenced January 13, 2020 as the date of injury. OWCP concluded that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,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 must first be determined whether fact of injury has been established.⁸ 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.⁹ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.¹⁰

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.¹¹ 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.¹² An employee's

⁴ *Supra* note 1.

⁵ *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).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *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).

⁸ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹² *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

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.¹³

ANALYSIS

The Board finds that an employment incident occurred in the performance of duty on January 13, 2020, as alleged.

Appellant's January 17, 2020 Form CA-1 alleged that he sustained an injury to the left side of his lower back when he got out of his work vehicle and felt a pop in his back on "January 14, 2020" at approximately 12:00 p.m. On the reverse side of the claim form appellant's supervisor acknowledged that appellant's injury occurred in the performance of duty. In D.M.'s January 14, 2020 statement, appellant informed her that at approximately 12:00 p.m. on January 13, 2020 he felt a pop in his lower back when he was getting out of his LLV. Dr. White's January 14, 2020 medical evidence diagnosed a lumbar strain and noted that appellant's injury was caused by the same mechanism of injury he provided in his Form CA-1 and in his conversation with D.M. Subsequent medical evidence, including Dr. Kiskila's January 17, 2020 report, all provide the same mechanism of injury with a date of injury of January 13, 2020.

Appellant's description of the employment incident is not contradicted by his medical reports or any other evidence of record. Moreover, he sought medical treatment shortly after his injury, just one day following the employment incident. Appellant's account of the alleged incident is consistent with the surrounding facts and circumstances and his subsequent course of action does not cast doubt on the validity of the claim. Thus, the Board finds that given the above-referenced evidence, he has alleged with specificity that the incident occurred at the time, place, and in the manner alleged.¹⁴

As appellant has established that the January 13, 2020 employment incident occurred as alleged, the question becomes whether this incident caused a personal injury.¹⁵ Thus, the Board will set aside OWCP's February 24, 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 his burden of proof to establish an injury causally related to the accepted employment incident.

CONCLUSION

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

¹³ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁴ *Id.*

¹⁵ 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 February 24, 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 22, 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