United States Department of Labor
Employees' Compensation Appeals Board

L.M., Appellant	)	
and	)	**Docket No. 21-0109**
	)	**Issued: May 19, 2021**
U.S. POSTAL SERVICE, POST OFFICE, Merrifield, VA, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2020 appellant, through counsel, filed a timely appeal from a May 8, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (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 injury in the performance of duty on December 3, 2018, as alleged.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On December 19, 2018 appellant, then a 26-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2018 she sprained her wrist when loading extra mail and heavy parcels while in the performance of duty.

In support of her claim, appellant submitted a December 3, 2018 letter from Dr. Dennis Sievers, a chiropractor. Dr. Sievers related that she sustained injuries to her neck, shoulder, elbows, spine, and legs in a motor vehicle accident on October 9, 2018. He opined that appellant's work exacerbated her injuries due to the repetitive moving and delivering heavy loads of mail. Dr. Sievers provided work restrictions, but also stated that she could return to work with no restrictions on January 7, 2019.

In a letter dated December 6, 2018, Dr. Sievers related that appellant had been off work due to severe pain in her arms, neck, and spine due to recent holiday workload. He stated that this severely exacerbated her injuries which were sustained in an automobile accident on October 9, 2018.

On December 12, 2019 the employing establishment executed an authorization for examination and/or treatment (Form CA-16) to Dr. Sievers for treatment of appellant's right wrist condition for the effects of the alleged December 3, 2018 employment injury.

OWCP received an undated statement on December 19, 2018 from appellant's supervisor, M.R., relating that appellant worked a full shift on December 3, 2018 and called out the following day. On December 11, 2018 appellant told her that she wanted to come in to complete an accident report. She also informed M.R. that she had been seeing a physician since a nonwork-related accident and that appellant did not want to see another physician.

In a letter dated December 19, 2018, the employing establishment controverted appellant's claim and related that her claim, if accepted, should only be accepted for an aggravation of a preexisting condition.

Appellant submitted an undated evaluation, which indicated diagnoses of right wrist pain and carpal tunnel syndrome and noted that she was unable to return to work in any capacity. The signature on the form was illegible.

OWCP received a report dated January 2, 2019 from Shannon Glaws, a physician assistant. Ms. Glaws noted that appellant had experienced pain in her right wrist beginning December 3, 2018. Appellant also reported pain in her thumb, middle, and ring fingers on the right side. Ms. Glaws diagnosed carpal tunnel syndrome in appellant's right wrist. She indicated that appellant likely strained her wrist from the overuse due to the nature of her job. Ms. Glaws gave appellant a wrist brace and instructed her not to return to work.

OWCP also received an unsigned duty status report (Form CA-17) dated January 2, 2019, which indicated that appellant could not return to work due to right wrist strain and carpal tunnel syndrome.

In a report dated January 7, 2019, Dr. Elaine Ahillen, a Board-certified orthopedic surgeon, specializing in hand surgery, noted that appellant had carpal tunnel syndrome and wrist pain on

her right side, which began on December 3, 2018. Appellant reported decreased mobility, stiffness, and tingling in her fingers. Her symptoms were aggravated by daily activities, lifting, and work. Dr. Ahillen diagnosed a right wrist injury and carpal tunnel syndrome and stated that appellant's ability to work was restricted. She also completed a Form CA-17 on January 7, 2019 wherein she noted appellant's diagnosis as right wrist strain from a December 3, 2018 injury, and a nonrelated carpal tunnel condition. Dr. Ahillen related that appellant could return to work on January 12, 2019 with restrictions.

In a report dated June 26, 2019, Dr. Ahillen related that appellant was experiencing pain on the bottom right side of her wrist, which began on December 3, 2018 as a result of overuse at work. Appellant related that she could not lift more than four or five pounds in her right hand. Dr. Ahillen stated that appellant continued to have numbness throughout her right extremity and she related that appellant's findings were suspicious for carpal tunnel syndrome or nerve compression proximally. She also completed a Form CA-17 on June 26, 2019 wherein she noted appellant's diagnosis as suspected nerve compression. Dr. Ahillen again noted that appellant could perform light-duty work with restrictions.

In a development letter dated December 5, 2019, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. Appellant was requested to provide a detailed description of how the injury occurred, for example, if lifting was the cause of the injury, a description of the object handled, its weight, and what she did with the object. She was also asked to address whether she had any prior similar conditions or injuries. It afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a report dated December 18, 2019 from Dr. Shannon Ginnan, a specialist in regenerative medicine. Dr. Ginnan related that appellant felt burning sensations and pain in both of her wrists for approximately two weeks prior to her injury on December 3, 2018. On December 3, 2018 appellant lifted a team-lift parcel by herself and felt a sensation of snapping in her right wrist, which caused her pain in her entire right arm and hand. Dr. Ginnan diagnosed right wrist sprain/strain and right wrist nerve impingement. She opined that appellant developed her wrist pathologies during her performance of her duties as a postal carrier. Dr. Ginnan stated that there were no other activities or history that could account for her current condition.

By decision dated January 15, 2020, OWCP accepted that the December 3, 2018 employment incident occurred as alleged, but denied the claim as causal relationship had not been established between appellant's right wrist condition and the accepted employment incident.

On February 11, 2020 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP received additional evidence. In an undated and unsigned medical report, appellant's diagnoses were listed as right wrist sprain/strain, right wrist nerve impingement, insomnia, stress, anxiety, and depression. The report concluded that her wrist pathologies were sustained during the performance of her employment duties on December 3, 2018.

OWCP received a report dated April 9, 2020 from Dr. Swarna Reddy, Board-certified in geriatric psychiatry. Dr. Reddy diagnosed severe anxiety, panic attacks, and major depressive disorder. She stated that appellant was unable to perform certain tasks after an accident at work.

By decision dated May 8, 2020, the hearing representative modified the January 15, 2020 decision to find that appellant had not established fact of injury as she had not responded to OWCP's development questionnaire, and the evidence of record indicated that she had sustained a nonwork-related motor vehicle accident prior to the claimed December 3, 2018 injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA[3] 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 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 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 a 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 that can be established only by medical evidence.[7]

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.[8] 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

[3] *Id*.

[4] *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).

[5] *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).

[6] *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).

[7] *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).

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

statements in determining whether a *prima faci*e case has been established. 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.[9]

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on December 3, 2018, as alleged.

Appellant filed her notice of traumatic injury on December 19, 2018 alleging that on December 3, 2018 she sustained a wrist injury due to loading extra mail and heavy parcels in the performance of duty. The Board notes that her description of the traumatic incident is imprecise and vague and fails to provide any specific detail or evidence establishing that the incident occurred as alleged.[10] Appellant did not specify on her claim form which wrist was injured, and provided no description or detail as to the alleged mechanism by which her routine work activities loading mail and parcels caused an injury.

The Board also notes that appellant's subsequent activity casts serious doubt on the validity of the claim. Appellant's supervisor related that appellant had worked a full shift on December 3, 2018, called off work the next day, but did not ask to fill out an accident report until December 11, 2018. In a development letter dated December 5, 2019, OWCP requested that she complete a factual questionnaire and describe the employment activities on December 3, 2018, which allegedly caused her injury. It asked appellant to describe, in part, the objects she lifted and how much they weighed. However, she did not respond.

OWCP's December 5, 2019 development questionnaire also requested that appellant describe any prior similar injury. This information was especially necessary as Dr. Sievers had related that he had been treating her since an October 9, 2018 nonwork-related motor vehicle accident and her work activities exacerbated her prior injuries. The lack of a description regarding appellant's actual work activities on December 3, 2018 as well as a description of her prior similar condition, prohibits a determination as to whether a medical opinion regarding diagnosis and causal relationship was based on an accurate history of injury.

The Board, therefore, finds that appellant has not established that an employment incident occurred on December 3, 2019 as alleged. Consequently, it is unnecessary to address the medical evidence of record.[11]

[9] *F.H., supra* note 4; *see M.C.*, Docket No. 18-1278 (issued March 7, 2019).

[10] *F.H., id*.

[11] *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.[12]

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty on December 3, 2018, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 8, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 19, 2021
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

[12] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *S.P.*, Docket No. 19-1904 (issued September 2, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).