

FACTUAL HISTORY

On December 9, 2020 appellant, then a 52-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that on December 8, 2020 he sustained a right shoulder injury while pushing a hamper sideways on the end of the trailer while in the performance of duty. He stopped work on December 8, 2020. On the reverse side of the claim form an employing establishment supervisor acknowledged that appellant was injured in the performance of duty.

The employing establishment issued an authorization for examination and/or treatment (Form CA-16) on December 8, 2020 for treatment of appellant's shoulder pain. The date of injury was listed as December 8, 2020.

In a December 8, 2020 report, Dr. Lemarra Brown, an osteopath specializing in family and internal medicine, noted that appellant presented with a right shoulder injury. She diagnosed strain of unspecified muscle/fascia/tendon at shoulder/upper right arm. Dr. Brown related that appellant indicated that he was "pushing a hamper on the back of a trailer when [appellant] injured his right shoulder, as the hamper got caught on something in the truck." She noted that he denied a shoulder injury or pain in the past. In a work activity status report of even date, Dr. Brown diagnosed strain of unspecified muscle/fascia of the right shoulder and right arm and released appellant to regular duty.

In a December 8, 2020 duty status report (Form CA-17), a physician with an unidentifiable signature indicated that on that date appellant hurt his shoulder pushing a hamper. The physician diagnosed right shoulder strain and recommended a return to work on that date.

By a December 8, 2020 statement, appellant noted that he was loading a hamper of registered mail on the end of his trailer when he felt a sharp stabbing pain in his shoulder.

In a development letter dated January 7, 2020, OWCP informed appellant of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion with a detailed description of the events and circumstances surrounding the alleged December 8, 2020 employment incident. It also requested a narrative medical report from appellant's treating physician with a detailed description of findings and a diagnosis, explaining how the alleged employment incident caused, contributed to, or aggravated his medical condition. OWCP afforded him 30 days to provide the necessary information.

OWCP subsequently received a December 21, 2020 Form CA-17 from Dr. Michael Hassman, an osteopathic physician specializing in family medicine specialist, who noted that appellant hurt his right shoulder while pushing a hamper. Dr. Hassman diagnosed a right shoulder sprain/strain and prescribed work restrictions.

A December 29, 2020 magnetic resonance imaging (MRI) scan of appellant's right shoulder noted findings of inflammatory and degenerative changes involving the acromioclavicular joint, partial undersurface tear involving the inferior articulating margin of the distal anterior supraspinous tendon, and small joint effusion.

In a January 14, 2021 report, Dr. Luke Austin, a Board-certified orthopedic surgeon, noted that appellant was complaining of right shoulder pain that occurred at work on December 8, 2020

while loading a truck. He recounted that it was during the holidays, the truck was full, and while pushing a hamper weighing 100 pounds onto the truck he injured his right shoulder. Dr. Austin noted that appellant denied any prior injuries to his right shoulder. He related that an MRI scan revealed a partial thickness rotator cuff tear. Dr. Austin diagnosed sprain of right rotator cuff capsule, initial encounter, and pain of right shoulder joint on movement. He indicated that there was no light-duty work available and appellant would be off work for the next month.

By decision dated February 9, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the incident and/or events occurred as alleged. It explained that he did not respond to the factual questionnaire and concluded that the requirements had, therefore, 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 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

³ *Supra* note 1.

⁴ *See G.K.*, Docket No. 20-1026 (issued December 11, 2020); *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).

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).

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 in establishing the occurrence of an injury when there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹¹ 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 serious doubt on an employee's statements in determining whether a *prima facie* case has been established. An employee's statements alleging that an injury occurred at a given time and in a given manner are of great probative value and will stand unless refuted by strong or persuasive evidence.¹²

ANALYSIS

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

On his Form CA-1 appellant related that on December 8, 2020 he sustained a right shoulder injury while pushing a hamper sideways on the end of a trailer. In a December 8, 2020 statement, he related that he was loading a hamper of registered mail when he felt a sharp stabbing pain in his right shoulder. On the reverse side of the claim form appellant's supervisor acknowledged that appellant was injured in the performance of duty on the CA-1 form. It also issued a Form CA-16 on December 8, 2020 for treatment of appellant's shoulder pain. Appellant immediately sought treatment with Dr. Brown who, like his subsequent treating physicians, Drs. Hassman and Austin related that appellant was injured when he was pushing a hamper on his truck while at work. They all provided diagnoses, which included a strain of unspecified muscle/fascia/tendon at shoulder/upper right arm. Appellant's claim of a December 8, 2020 employment incident has not been refuted by strong or persuasive evidence. He has provided a consistent account of the time, place, and manner of injury. There are insufficient discrepancies in the case record regarding appellant's claimed December 8, 2020 employment incident so as to cast serious doubt on the fact that the injury occurred on that date in the manner alleged.¹³ The Board, thus, finds that the evidence of record is sufficient to establish that the employment incident occurred in the performance of duty on December 8, 2020 as alleged.

As appellant has established that the December 8, 2020 employment incident factually occurred, the question becomes whether this incident caused an injury.

The Board will, therefore, remand the case for consideration of the medical evidence on the issue of causal relationship. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ *See V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹² *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *See C.G.*, Docket No. 19-1404 (issued April 14, 2020); *see D.L.*, Docket No. 18-1189 (issued February 15, 2019).

of proof to establish an injury causally related to the accepted December 8, 2020 employment incident.¹⁴

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on December 8, 2020, as alleged. The case is not in posture for decision, however, with regard to whether appellant has established an injury causally related to the accepted December 8, 2020 employment incident.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the February 9, 2021 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: November 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

¹⁴ *Id.*

¹⁵ A completed CA-16 form 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); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).