

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

M.S., Appellant)

and)

U.S. POSTAL SERVICE, POST OFFICE,)
Pittsburgh, PA, Employer)

**Docket No. 22-0106
Issued: April 4, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On October 31, 2021 appellant filed a timely appeal from an October 6, 2021 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 his burden of proof to establish a traumatic injury in the performance of duty on August 23, 2021, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 6, 2021 decision, a appellant submitted additional evidence to OWCP. 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 August 26, 2021 appellant, then a 55-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2021 he sprained his left knee when he struck it on the door frame of a long-life vehicle (LLV) while in the performance of duty. On the reverse side of the claim form appellant's supervisor, J.C., acknowledged that appellant was injured in the performance of duty. However, he challenged the factual basis of appellant's claim and controverted continuation of pay (COP) because appellant did not report the accident when it occurred. J.C. indicated that the employing establishment received notice on August 26, 2021 and that appellant stopped work on August 24, 2021.

In an August 24, 2021 emergency department work release form, Dr. Gregory Hellier, a Board-certified osteopath specializing in emergency medicine, indicated that appellant was seen on that date and advised that appellant should not do standing work, should not drive or operate dangerous machinery, should engage in minimal walking with crutches and a leg splint, and must follow up with a company-designated physician within four days.

In August 25, 2021 progress notes, David Brown, a certified physician assistant, related that appellant had injured his left knee at work the day before when he struck it on a car door. He indicated that appellant reported an immediate onset of left knee pain and difficulty with weightbearing, bending his knee, and ambulating since then. Mr. Brown denied a prior problem or injury, but indicated that appellant has some arthritis in his knee. His examination revealed tenderness to palpation over the anterior aspect of appellant's patella, as well as minimal range of motion of the left knee with heavy guarding. Mr. Brown reviewed x-ray scans obtained in the emergency department the day before, which revealed mild-to-moderate tricompartmental degenerative joint disease with squaring off of the medial femoral condyle and a small osteophyte formation. He diagnosed a patellar contusion and possible occult fracture. In a workers' compensation status update of even date, Mr. Brown diagnosed a left knee contusion and advised that appellant could not return to work.

In a September 1, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received August 24, 2021 emergency department discharge notes from Dr. Hellier, who diagnosed a knee sprain.

In an August 24, 2021 statement, appellant explained that at 2:45 p.m. on August 23, 2021 he dismounted his LLV with mail in both hands and "banged" his left knee on the LLV's door jamb. He stated that he continued with his deliveries with very little discomfort, but at his next stop, he jogged up a few steps and felt a sharp pain in his knee, noting "it wasn't nothing I thought [would] stop me from completing my last two loops." Appellant reported that he completed his route and clocked out at 4:00 p.m. Later that, evening, at approximately 8:00 p.m., he could not put weight on his left leg. Appellant iced his knee and went to bed, before waking up in pain at 11:00 p.m. He stated that he decided to go to the emergency room at 2:30 a.m.

Appellant also submitted a copy of Mr. Brown's August 25, 2021 progress notes cosigned by Dr. John Richmond, a Board-certified orthopedic surgeon, diagnosing a contusion of the left knee.³

Appellant partially responded to OWCP's development questionnaire on September 13, 2021, clarifying that he hit his left knee against the frame of the LLV.

In a September 13, 2021 work excuse note, Mr. Brown indicated that appellant was seen for a medical visit that day. In a workers' compensation status update of even date, he again diagnosed a left knee contusion and advised that appellant could return to work without restrictions that day.

In a September 29, 2021 statement, M.A., an employing establishment human resource management specialist, challenged appellant's claim because appellant did not immediately report his injury. She also noted that his medical documentation indicated that he had some arthritis in his knee, mild-to-moderate tricompartmental degenerative joint disease, and a small osteophyte formation, arguing that these are preexisting conditions that would cause his symptoms. M.A., attached a copy of appellant's August 24, 2021 statement, as well as an undated statement from appellant's supervisor, J.C. J.C. indicated that appellant telephoned in at 6:05 a.m. on August 24, 2021 to report that appellant would not be into work because he hurt his knee on his route the day before. He noted that appellant came into the office later that day on crutches with documentation from appellant's emergency department visit that morning and appeared to be moving with difficulty. J.C. stated that the degree of appellant's injury was "not consistent with the events [appellant] described the day before when he stated [that] he had little problem completing the route and chose not to report hitting his knee at any time while he was on the clock. He further postulated that it is possible the injury occurred after leaving work on August 23[, 2021]."

By decision dated October 6, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the August 23, 2021 employment incident occurred as alleged. It noted that he had not provided a complete response to its development questionnaire. 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 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

³ The Board notes that, while Dr. Richmond diagnosed right patellar contusion with possible occult fracture, he only examined appellant's left knee.

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).

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 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 appellant has met his burden of proof to establish a traumatic injury in the performance of duty on August 23, 2021 as alleged.

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

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 667-71 (1987).

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

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

persuasive evidence.¹⁴ Appellant alleged in his August 26, 2021 Form CA-1 that he sprained his left knee when he struck it on the door frame of an LLV. Though the employing establishment challenged the factual basis of his claim, it failed to provide persuasive evidence contradicting his account. The primary basis for the challenge was that appellant was injured at 2:45 p.m. on August 23, 2021 but did not report the injury until 6:05 a.m. the next morning. However, appellant explained that he did not initially think that he had sustained a serious injury. A delay in reporting of less than one day is not persuasive evidence refuting his account.¹⁵

Further, the remaining evidence in the record corroborates appellant's account. Appellant sought medical care with Dr. Hellier in the early morning hours of August 24, 2021 for a knee sprain. The next day, he was seen by Mr. Brown. In his August 25, 2021 progress notes, cosigned by Dr. Richmond, he related that appellant struck his left knee on the car door at work and diagnosed a left knee contusion and possible occult fracture. Appellant was again seen by Mr. Brown for a left knee contusion on September 13, 2021. The injuries he claimed are consistent with the facts and circumstances he set forth, his actions, and the medical 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 23, 2021 as alleged.

As appellant has established that the August 23, 2021 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁶ As OWCP found that he had not established fact of injury, it has not evaluated the medical evidence. The Board will, therefore, set aside OWCP's October 6, 2021 decision and remand the case for consideration of the medical evidence of record.¹⁷ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an employment incident in the performance of duty on August 23, 2021, as alleged. The Board further finds that the case is not in posture for decision regarding whether the medical evidence is sufficient to establish an injury causally related to the August 23, 2021 employment incident.

¹⁴ *See id.*

¹⁵ *See id.*

¹⁶ *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).

¹⁷ *M.H., id.*; *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the October 6, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 4, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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