United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 22-0448**
	)	**Issued: August 22, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Coppell, TX, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 1, 2022 appellant filed a timely appeal from a January 11, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 November 24, 2021, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of the January 11, 2022 decision, OWCP received additional evidence. 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 November 29, 2021 appellant, then a 40-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on November 24, 2021 he injured his right ankle when he stepped out of his long life vehicle (LLV) to start delivery and stepped into a hole that was covered by leaves while in the performance of duty. He explained that he turned his ankle, heard a pop, and then fell to the ground. On the reverse side of the claim form his supervisor, J.B., acknowledged that appellant was injured in the performance of duty. However, he challenged the factual basis of appellant's claim because appellant did not submit medical evidence and appellant had not returned to work as of December 2, 2021. J.B. indicated that the employing establishment received notice on November 29, 2021 and that appellant stopped work on November 26, 2021. On November 29, 2021 the employing establishment executed an authorization for examination and/or treatment (Form CA-16).

In a November 29, 2021 report, Dr. David S. Salas, a Board-certified family physician, indicated that appellant was seen for a right ankle injury. He reported that on November 24, 2021 appellant was at work getting off his mail truck and stepped down into a hole covered in leaves, twisting his ankle. Appellant related that he had twisted his ankle multiple times in the past when he played left tackle in high school. Dr. Salas' physical examination of appellant's right ankle and foot revealed ankle swelling, lateral ankle swelling, decreased range of motion, painful range of motion, medial and lateral ankle tenderness, and abnormal mobility. He reviewed an ankle x-ray taken that day, which revealed an old fracture, but no new fractures. Dr. Salas diagnosed a right ankle sprain, recommended rest, ice, compression, and elevation and physical therapy, and advised appellant to remain off work for three days.

In an attending physician's report, Part B of Form CA-16 dated November 29, 2021, Dr. Salas related the same factual history and noted that appellant had multiple ankle sprains in the distant past as well, as a distant old lateral malleolar fracture. He diagnosed an acute right ankle sprain and checked a box marked "Yes" in response to the question of whether the condition found had been caused or aggravated by the claimed employment incident. Dr. Salas indicated that appellant was totally disabled from November 29 through December 2, 2021 and partially disabled from December 3 through 13, 2021, during which time he would be on light-duty work and should walk with an air stirrup.

In a December 7, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received a November 29, 2021 right ankle x-ray report, which revealed lateral soft tissue swelling with probable lateral sprain injury, including a five-millimeter osseous avulsion fragment at the fibula tip.

By decision dated January 11, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the November 24, 2021 employment incident occurred as alleged. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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 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 and 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

[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).

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

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 his burden of proof to establish a traumatic incident in the performance of duty on November 24, 2021, as alleged.

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] Appellant alleged in his November 29, 2021 Form CA-1 that he twisted and sprained his right ankle when he stepped out of his LLV and into a hole that was covered by leaves while in the performance of duty. Though the employing establishment challenged the factual basis of appellant's claim, it failed to provide persuasive evidence contradicting appellant's account. The primary basis for the challenge was that appellant did not submit medical evidence, employee statements, or supervisor statements establishing fact of injury. However, appellant did submit a November 29, 2021 medical report from Dr. Salas indicating that appellant was treated for a right ankle injury sustained at work on November 24, 2021, as well as Part B of a Form CA-16 of even date indicating the same. Additionally, his supervisor, J.B., acknowledged on the reverse side of the Form CA-1 that appellant was injured in the performance of duty. The employing establishment's assertion regarding the evidence submitted is not persuasive evidence refuting appellant's account.[14]

The incident appellant claimed is consistent with the facts and circumstances he set forth, his actions, and the medical evidence he submitted. The Board, thus, finds that he has met his burden of proof to establish an employment incident in the performance of duty on November 24, 2021, as alleged.

As appellant has established that the November 24, 2021 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.[15] 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 January 11, 2022 decision and remand the case for consideration of the medical evidence of record.[16] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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

[13] *See id*.

[14] *See id*.

[15] *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).

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

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on November 24, 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 accepted November 24, 2021 employment incident.[17]

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2022 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: August 22, 2022
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

[17] The Board notes that the employing establishment executed 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); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).