

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on May 6, 2020, as alleged.

FACTUAL HISTORY

On May 29, 2020 appellant, then a 57-year-old nurse, filed a traumatic injury claim (Form CA-1) alleging that on May 7, 2020 he injured his left shoulder, upper arm, and back when repositioning a patient in bed and pulling a draw sheet while in the performance of duty. He explained that he had been repositioning the patient in bed every two hours and began experiencing excruciating pain in his left shoulder. Appellant noted that the following day he had pain radiating down his neck and mid back. On the reverse side of the claim form the employing establishment controverted appellant's claim noting that he was not scheduled to work on May 7, 2020 at the time of the injury. Supervisor E.R. also challenged the claim, contending that appellant initially reported that he sustained a non-work-related injury, but then subsequently reported that the injury was in fact work related.

In a June 9, 2020 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a May 7, 2020 report, Jeremy Wiley, a nurse practitioner, diagnosed left shoulder joint pain.

In a May 12, 2020 medical note, Dr. Gregory Bevels, Board-certified in family practice, noted that appellant was under his care and provided work restrictions of no lifting or pulling over 20 pounds for two weeks. In a medical report of even date, he noted that appellant experienced bilateral shoulder pain and muscle stiffness for a week. Dr. Bevels diagnosed left shoulder pain and left shoulder muscle spasm.

May 18, 2020 x-rays of the left and right shoulder revealed normal results.

In a May 18, 2020 report of employee's emergency treatment, Judy Jameson, an advanced practice registered nurse, indicated that appellant developed a non-work-related illness and provided work restrictions. In a progress report of even date, she indicated that he had stopped work beginning May 9, 2020 due to concerns over having COVID-19. Appellant reported that he developed muscle aches along his trapezius muscles and back. Ms. Jameson noted that he sought medical care for muscle pain on May 12, 2020 with Dr. Bevels, who opined that it was possibly pain radiating down from his shoulder due to arthritis. She also indicated that appellant denied any significant shoulder injury, but mentioned that he had been working with a heavy patient, who needed to be turned over every two hours.

In a May 27, 2020 medical note, Dr. Bevels repeated his previous work restrictions.

In a June 10, 2020 letter, the employing establishment again controverted appellant's claim.

In an undated response to OWCP's development questionnaire, appellant clarified his date of injury as May 6, 2020. He explained that he had previously provided an incorrect date of injury due to numerous changes that occurred with his assignment and work location. Appellant further noted that he initially believed that his condition was a symptom of the COVID-19, but subsequently tested negative for COVID-19. He again contended that, at the time of his injury, he was assisting a patient in bed. Appellant explained that he was pulling the draw sheet when he felt severe pain in his left shoulder that felt like a muscle sprain or a pulled muscle. He noted that his pain initially decreased, but later returned.

In a June 14, 2020 injury report, appellant reported that he sustained a work-related left shoulder injury on May 6, 2020. He explained that the date of injury was previously reported incorrectly as May 7, 2020.

In a June 15, 2020 work status report, Dr. Bevels provided work restrictions.

In a June 30, 2020 attending physician's report (Form CA-20), Dr. Robert C. Smith, Board-certified in family practice, indicated that appellant's date of injury was May 7, 2020. He noted that appellant injured his left shoulder while repositioning a patient in bed. Dr. Smith diagnosed incomplete rotator cuff tear or rupture of left shoulder, unspecified rotator cuff tear or rupture of left shoulder, and left shoulder impingement.

By decision dated July 10 2020, OWCP denied appellant's traumatic injury claim, finding that the medical evidence of record was insufficient to establish a diagnosis in connection with the accepted May 7, 2020 employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined under FECA.

In a June 30, 2020 medical report, Dr. Smith noted May 7, 2020 as appellant's date of injury. He noted that appellant was performing his daily work duties, including repositioning one of his patients and pulling the draw sheet, when he experienced excruciating pain in his left shoulder. Dr. Smith diagnosed incomplete left shoulder rotator cuff tear/rupture, left shoulder impingement syndrome, and unspecified left shoulder rotator cuff tear/rupture. He opined that continuous repositioning of a patient over two hours while in a lying position directly caused appellant's diagnosed conditions. In a work capacity evaluation (Form OWCP-5c) of even date, Dr. Smith diagnosed left shoulder rotator cuff tear and impingement syndrome.

In a July 16, 2020 medical report, Dr. Smith reiterated his findings and diagnoses. In a Form OWCP-5c of even date, he reiterated his diagnoses and noted that appellant could not perform his work duties.

In a July 27, 2020 letter, Dr. Smith reiterated appellant's history of injury and diagnosed a left shoulder rotator cuff tear, a supraspinatus tear, and impingement syndrome.

In a July 31, 2020 medical report, Dr. Smith reiterated his findings and diagnoses. In a Form OWCP-5c of even date, Dr. Smith again noted that appellant could not perform his work duties.

In an August 10, 2020 medical report, Dr. Smith reiterated his findings and diagnoses. In a Form OWCP-5c of even date, he again noted that appellant could not perform his work duties.

On August 12, 2020 appellant requested reconsideration. By decision dated August 19, 2020, OWCP denied modification of the July 10, 2020 decision.

In an August 20, 2020 Form OWCP-5c of even date, Dr. Smith noted that appellant was still unable to perform his work duties.

In an August 21, 2020 statement, appellant contended that he sustained his injury on May 6, 2020 while assisting and repositioning a bedbound patient and pulling the draw sheet when he experienced severe pain. He again explained that he initially reported the date of injury as May 7, 2020, which was in error.

On August 25, 2020 appellant requested reconsideration.

On September 15, 2020 OWCP received an August 31, 2020 notification of personnel action (Form SF-50).

In a September 15, 2020 Form OWCP-5c, Dr. Smith reiterated his diagnoses.

In an October 6, 2020 letter, the employing establishment controverted appellant's claim.

In an undated statement, appellant asserted that he woke up with pain in his left shoulder and neck on May 7, 2020 after his shift ended on May 6, 2020 at 7:15 a.m. In another undated statement, appellant reiterated that, although he initially reported May 7, 2020 as the date of injury, he sustained his work-related injury on May 6, 2020.

By decision dated November 23, 2020, OWCP modified the August 19, 2020 decision to find that appellant had not established that the May 7, 2020 employment incident occurred as alleged, noting that appellant provided inconsistent statements regarding his injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 of FECA, that the claim was timely filed within the applicable time limitation 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

³ *Supra* note 2.

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).

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 first must be determined whether 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 and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and 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 of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹ 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 case has been established. An employee's statement 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.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the May 7, 2020 employment incident occurred while in the performance of duty, as alleged.

To establish a claim for compensation in a traumatic injury claim, an employee must submit a statement that explains how the claimed injury occurred.¹¹ Appellant has provided a detailed description on the claim form, an undated response to OWCP's development questionnaire, and subsequent statements explaining how the alleged employment incident occurred. His claim form and subsequent statements were consistent in describing that an injury occurred on May 7, 2020 when repositioning a patient pulling a draw sheet while in the performance of duty. Thus, the

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 *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

⁹ *See V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹⁰ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *B.L.*, Docket No. 20-0394 (issued July 17, 2020); *R.B.*, Docket No. 19-1026 (issued January 14, 2020).

Board finds that appellant has established that an employment incident occurred on May 7, 2020, as alleged.

Consequently, the question becomes whether this incident caused an injury.¹² Thus, the Board will set aside OWCP's November 23, 2020 decision and remand the case for consideration of the medical evidence.¹³ 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 a diagnosed medical condition causally related to the accepted May 7, 2020 employment incident.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the May 7, 2020 employment incident occurred while in the performance of duty, as alleged. The Board further finds that this case is not in posture for decision with regard to whether he has established a medical condition causally related to the accepted May 7, 2020 employment incident.

¹² *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *A.C.*, Docket No. 18-1567 (issued April 9, 2019).

¹³ *S.V.*, Docket No. 21-0027 (issued April 29, 2021); *W.R.*, Docket No. 17-0287 (issued June 8, 2018).

ORDER

IT IS HEREBY ORDERED THAT the November 23, 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: February 2, 2022
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