

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

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L.E., Appellant )

and )

DEPARTMENT OF THE INTERIOR, BUREAU )  
OF INDIAN AFFAIRS, WINGATE )  
ELEMENTARY SCHOOL, Fort Wingate, NM, )  
Employer )  
\_\_\_\_\_ )

**Docket No. 21-0847**  
**Issued: February 16, 2022**

*Appearances:*  
*Appellant, pro se*  
*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 May 10, 2021 appellant filed a timely appeal from a January 25, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (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 a traumatic injury in the performance of duty on September 4, 2019, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 30, 2020 appellant, then a 59-year-old home living assistant, filed a traumatic injury claim (Form CA-1) alleging that she experienced severe back and leg pain on September 4, 2019 while in the performance of duty. She described a series of work-related incidents occurring on July 1 and 2, and August 14 and 20, 2019 during which she experienced back pain as a result of heavy lifting and slipping on a wet floor that precipitated her inability to walk on September 4, 2019. On the reverse side of the claim form appellant's supervisor, T.M., acknowledged that she was injured while in the performance of duty and noted that his knowledge of the facts about the injury conformed with her statements. Appellant did not stop work.

In a development letter dated December 21, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a factual questionnaire for her completion. OWCP specifically asked that appellant clarify the dates of injury. In a separate development letter of even date, it requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations. OWCP afforded both parties 30 days to respond.

Appellant submitted a signed statement of certification dated January 3, 2021, which was attached to OWCP's development letter; however, she did not respond to the development questionnaire. In an accompanying November 14, 2019 statement, she indicated that she previously sustained multiple injuries to her back and leg at work on July 1 and 2, and August 14 and 20, 2019 when she threw her back out as a result of heavy lifting up to 45 pounds and nearly slipping on a wet floor. Appellant asserted that on September 4, 2019, during her night shift, and after she had completed her regular duties and she was taking an online test when her back and leg began to hurt and went numb. She alleged that she gradually began limping as her pain worsened while escorting students to breakfast and class. Appellant noted that she asked a coworker to temporarily take over her duties. She asserted that she left work with pain and did not return to work until November 3, 2019, with restrictions, after she received medical care for spinal stenosis.

OWCP received discharge instructions dated September 4, 2019 from Stacy L. Pleasant, an emergency department nurse practitioner, and September 7, 2019 from Dr. Safia Rubaii, Board-certified in emergency medicine, noting back pain. Additionally, appellant submitted a September 9, 2019 note from Javed P. Caprietta, an emergency department nurse practitioner, noting radiculopathy.

In a September 17, 2019 progress note, Dr. John H. York, an osteopath, Board-certified in orthopedic surgery, noted that appellant was unable to perform her regular duties.

In September 27, 2019 discharge note and instructions, an unidentifiable healthcare provider noted that appellant was diagnosed with low back pain, bilateral sciatica, and multilevel lumbar spinal stenosis and had underwent lumbar epidural steroid injections.

In a November 18, 2019 attending physician's report (Form CA-20), Dr. Mia Lozada, a Board-certified internist, provided a date of injury of September 4, 2019 and diagnosed severe

spinal stenosis at L3-4 and L4-5 levels and lower back pain. She opined that appellant's conditions were aggravated by work-related activity.

In a February 11, 2020 medical note, Dr. York provided work restrictions.

In a December 17, 2020 letter, Dr. Lozada noted that appellant was treated for diabetes mellitus, high cholesterol, and spinal stenosis. She indicated that she was requesting disability due to pain caused by the severe spinal stenosis.

By decision dated January 25, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. 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<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>

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

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> *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).

<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

action.<sup>7</sup> 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. 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.<sup>8</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on September 4, 2019, as alleged.

Appellant has not provided sufficient detail to establish that a traumatic incident occurred in the performance of duty as alleged.<sup>9</sup> On her January 30, 2020 Form CA-1 she indicated that she experienced severe back and leg pain on September 4, 2019 while in the performance of duty, but also alleged she sustained multiple work-related injuries on various dates during the period July 1 to August 20, 2019 and only later developed pain on September 4, 2019 attributed to these incidents. In a development letter dated December 21, 2020, OWCP provided a factual questionnaire for appellant's completion and requested that she submit clarifying information describing how and when her claimed injury actually occurred. Although appellant submitted a signed statement of certification dated January 3, 2021, which was attached to OWCP's development letter; she did not specifically respond to the development questionnaire. Absent the submission of supporting evidence, as was requested in the development questionnaire, it cannot be determined that the incident occurred as alleged.<sup>10</sup>

In a November 14, 2019 statement, appellant asserted that on September 4, 2019 she experienced back and leg pain while completing an online test and then while escorting students to breakfast and class. She again noted that she previously sustained multiple injuries to her back and leg at work on July 1 and 2, and August 14 and 20, 2019. However, appellant provided no other information or statement clarifying what work duties were alleged to have caused her claimed injury on September 4, 2019. Moreover, she did not provide a description or any details of the alleged September 4, 2019 incident sufficient to determine the circumstances surrounding her

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<sup>7</sup> See *J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

<sup>8</sup> See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>9</sup> See *J.W.*, Docket No. 19-0335 (issued July 2, 2019); *S.H.*, Docket No. 18-0026 (issued April 13, 2018).

<sup>10</sup> *L.Y.*, Docket No. 21-0221 (issued June 30, 2021); *H.O.*, Docket No. 17-1176 (issued November 27, 2018).

injury.<sup>11</sup> The Board has found that a vague recitation of the facts does not support an appellant's allegation that a specific incident occurred, which caused a work-related injury.<sup>12</sup>

OWCP also received medical reports dated September 4, 2019 through December 17, 2020, noting that appellant was treated for back pain and spinal stenosis. However, these reports are insufficient to establish the factual component of appellant's claim, as they provided no indication as to how the injury occurred.<sup>13</sup> By failing to respond to the questionnaire, describing the specific employment incident and circumstances surrounding her alleged injury, or providing a history of injury when seeking medical treatment, appellant has not established that the traumatic incident occurred on September 4, 2019 in the performance of duty, as alleged.<sup>14</sup>

As the evidence of record is insufficient to establish that the incident occurred as alleged, the Board finds that appellant has not met her burden of proof.

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.<sup>15</sup>

### CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on September 4, 2019, as alleged.

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<sup>11</sup> See *S.C.*, Docket No. 20-0733 (issued August 3, 2021); *L.M.*, Docket No. 21-0109 (issued May 19, 2021).

<sup>12</sup> *L.M.*, Docket No. 20-1592 (issued May 3, 2021); *R.P.*, Docket No. 19-1233 (issued November 19, 2019); *E.C.*, Docket No. 19-0943 (issued September 23, 2019); see also *K.S.*, Docket No. 17-2001 (issued March 9, 2018).

<sup>13</sup> See *M.E.*, Docket No. 20-1336 (issued July 2, 2021); *S.Z.*, Docket No. 19-1125 (issued October 22, 2020).

<sup>14</sup> *S.C.*, *supra* note 11

<sup>15</sup> To the extent that appellant is alleging an injury that occurred over more than one workday or work shift, she may file a Form CA-2 with OWCP.

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 25, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 16, 2022  
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