

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

S.G., Appellant	)	
	)	
and	)	<b>Docket No. 21-1039</b>
	)	<b>Issued: February 22, 2022</b>
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Little Rock, AR, 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  
PATRICIA H. FITZGERALD, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On June 29, 2021 appellant filed a timely appeal from a June 17, 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.<sup>2</sup>

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

<sup>2</sup> The Board notes that, following the June 17, 2021 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.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish that a traumatic injury occurred in the performance of duty on March 15, 2021, as alleged.

## FACTUAL HISTORY

On March 16, 2021 appellant, then a 42-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 15, 2021 she sustained bilateral carpal tunnel syndrome due to repetitive motion while in the performance of duty. She stopped work on March 16, 2021. Appellant's supervisor acknowledged on the reverse side of the claim form that the injury occurred in the performance of duty.

With her claim, appellant submitted form reports excusing her from work on March 15, 2021 due to pinched nerve, cervical radiculopathy, and carpal tunnel syndrome.

In a March 15, 2021 triage note, Lindsey N. Johnson, a registered nurse, diagnosed bilateral elbow, hand, and forearm pain since February 2021. She noted that appellant had worked loading boxes at the employing establishment.

In emergency department notes dated March 15, 2021, Daniel L. Eubanks, an advanced practice registered nurse in emergency medicine, noted that appellant was seen for intermittent bilateral upper extremity numbness, which had increased in frequency since February 2021. Appellant recounted that she had been referred to the emergency room by her employer because she kept dropping items. Physical examination findings were detailed. Mr. Eubanks diagnosed cervical radiculopathy.

In an April 5, 2021 duty status report (Form CA-17), Dr. Jesse Abler, an osteopath specializing in orthopedic surgery, diagnosed bilateral wrist carpal tunnel and right elbow lateral epicondylitis. He noted the date of injury as March 15, 2021. Under description of injury, Dr. Abler noted elbow and wrist repetitive motion. He indicated that appellant was able to work as of April 5, 2021 with restrictions.

On April 14, 2021 OWCP received an undated attending physician's report (Form CA-20) from Dr. Abler wherein he diagnosed bilateral wrist carpal tunnel and right elbow lateral epicondylitis. Dr. Abler listed March 15, 2021 as the date of injury. He checked a box marked "Yes" to the question of whether the condition found had been caused or aggravated by the employment activity of repetitive work.

In an attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16) dated April 5, 2021, Dr. Abler diagnosed bilateral wrist carpal tunnel and right elbow lateral epicondylitis. He listed March 15, 2021 as the date of injury. Dr. Abler checked a box marked "Yes" in response to the question of whether the condition found had been caused or aggravated by an employment activity.

On April 21, 2021 appellant accepted an April 7, 2021 modified, limited-duty job offer.

In a development letter dated May 6, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond. No response was received.

By decision dated June 17, 2021, OWCP denied appellant's claim, finding that the factual evidence of record was insufficient to establish that an employment incident occurred on March 15, 2021 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<sup>3</sup> 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,<sup>4</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>5</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>6</sup>

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.<sup>7</sup> Generally, 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.<sup>8</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>9</sup>

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *T.G.*, Docket No. 20-1549 (issued August 3, 2021); *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).

<sup>5</sup> *T.G.*, *id.*; *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *T.G.*, *id.*; *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).

<sup>7</sup> *T.G.*, *id.*; *T.A.*, Docket No. 20-1284 (issued January 27, 2021); *T.H.*, 59 ECAB 388, 393-94 (2008).

<sup>8</sup> *T.G.*, *id.*; *M.F.*, Docket No. 19-0578 (issued January 26, 2021); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *G.E.*, Docket No. 20-1081 (issued January 26, 2021); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

An employee's statement 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>10</sup> Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. An employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim. Circumstances such 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>11</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 March 15, 2021, as alleged.

On her Form CA-1, appellant indicated that on March 15, 2021 she developed bilateral carpal tunnel syndrome due to repetitive work. She did not submit a detailed account of the alleged injury, describe the repetitive work performed, or provide any additional corroborating factual evidence describing how she sustained an injury on March 15, 2021. The Board has found that such a vague recitation of facts does not support a claimant's allegation that a specific event occurred to cause a work-related injury.<sup>12</sup>

OWCP, in its May 6, 2021 development letter, informed appellant of the type of factual and medical evidence needed to establish her traumatic injury claim. It requested that she complete an attached questionnaire and provide a detailed factual description of the alleged employment incident. Appellant, however, did not respond to OWCP's development letter.

As there is no evidence of record to substantiate a traumatic injury in the performance of duty on March 15, 2021, 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.

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<sup>10</sup> *C.R.*, Docket No. 20-1147 (issued January 5, 2021); *M.S.*, Docket No. 18-0059 (issued June 12, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>11</sup> *T.G.*, *supra* note 5; *K.F.*, Docket No. 18-0485 (issued February 18, 2020); *D.R.*, Docket No. 19-0072 (issued June 24, 2019).

<sup>12</sup> *T.C.*, Docket No. 20-1513 (issued June 4, 2021); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on March 15, 2021, as alleged

**ORDER**

**IT IS HEREBY ORDERED THAT** June 17, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 22, 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