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

| | | |
|---|---|---|
| **C.B., Appellant** | ) | |
| **and** | ) | **Docket No. 21-0670** |
| | ) | **Issued: January 27, 2022** |
| **U.S. POSTAL SERVICE, CHICAGO CENTER CARRIER ANNEX, Chicago, IL, Employer** | ) | |

*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 March 15, 2021 appellant filed a timely appeal from a February 17, 2021 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 her burden of proof to establish an injury in the performance of duty on November 9, 2020, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the February 17, 2021 decision, OWCP received additional evidence and appellant submitted additional evidence on appeal. 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 December 21, 2020 appellant, then a 57-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2020 she sustained a sprain/fracture to her right knee when picking up military bags while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that appellant was injured while in the performance of duty, but controverted her claim, noting that she had been working with a limp for a while and that her injury was not caused by her work. Appellant stopped work on November 10, 2020 and returned to work on November 15, 2020.

A December 15, 2020 magnetic resonance imaging (MRI) scan of the right knee revealed medial tibial plateau subchondral insufficiency fracture, chondromalacia, osteoarthritis, medial meniscal intrasubstance degeneration and probable tear at the posterior horn root ligament attachment, small joint effusion with synovial thickening and partially ruptured Baker's cyst, and mild Iliotibial (IT) band and patellar tendon-lateral femoral condyle friction syndrome.

In a December 17, 2020 statement, appellant asserted that she was injured on November 9, 2020 when, while working on a machine with a coworker, she tried to pick up a military bag. She explained that she heard and felt a pop in her right knee, as well as a gushing sensation. Appellant dropped the bag and had to sit for a period of time before she was able to stand back up and go home. She indicated that when she woke up the next day, she was unable to walk for the next three days as her pain was too unbearable. Appellant noted that she first saw her doctor on November 12, 2020 and then ended up in an emergency room two days later. She explained that she had to wait three weeks for an MRI scan because of the COVID-19 pandemic. Appellant asserted that when she returned to work on November 15, 2020, she notified her supervisor of her injury. She indicated that her supervisor temporarily reassigned her to a rewrap area. Appellant explained that she did not report her injury sooner because she only received her MRI scan findings on December 15, 2020, which showed that she sustained a fracture and a small tear in her right ligament.

In a December 19, 2020 letter, appellant's supervisor, L.H., noted that on or around November 10, 2020 appellant came to work and reported that her leg was hurting and that she requested to be temporarily placed on a different assignment. She noted that she had assigned her to a rewrap area. L.H. indicated that appellant missed a few days of work and returned, stating that she needed further medical attention from her physician and that she needed to be back in the rewrap area to work. She notified appellant that she needed to provide proper documentation from her doctor to be excused from her normal duties. L.H. noted that on December 17, 2020 appellant notified her for the first time that she wanted to file an accident report, stating that her leg problem was due to a work-related injury. She noted that since appellant was placed on a new assignment, she always had a severe walking impairment, which made her body twist while walking. L.H. contended that appellant had more than enough time to report that her injury was work related, but did not. She asserted her belief that her pain was from a preexisting condition, not a work-related injury.

In a December 22, 2020 medical report, Dr. Brian Forsythe, a Board-certified orthopedic surgeon, noted that appellant's injury occurred at work on November 9, 2020 while lifting a bag full of mail and packages when she felt a pop and experienced pain in her right knee. He reviewed

the December 15, 2020 MRI scan of the right knee and diagnosed an insufficiency fracture and a medial meniscus tear of the right knee.

In a January 14, 2021 development letter, OWCP advised appellant that additional factual and medical evidence was needed in support of her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a December 18, 2020 letter, Dr. Suwon Nopachai, a Board-certified internist, noted that appellant first contacted her on November 11, 2020 regarding her November 9, 2020 work-related knee injury. She noted that appellant was subsequently seen in her clinic on November 12, 2020 and her MRI scan of the right knee demonstrated a fracture and other problems that needed to be addressed by an orthopedic surgeon.

In a December 22, 2020 duty status report (Form CA-17), Dr. Forsythe diagnosed a right medial tibial plateau insufficiency fracture and a right medial meniscus tear, and provided work restrictions. In a January 6, 2021 medical report, Dr. Forsythe noted that appellant's date of injury was November 9, 2020 and diagnosed a stress fracture of tibia.

Dr. Forsythe, in a January 19, 2021 medical report, diagnosed an insufficiency fracture of the right knee and noted that appellant's knee was improving. In medical notes of even date, he diagnosed a right knee medial plateau insufficiency fracture and indicated that appellant could return to work with restrictions. In a Form CA-17 of even date, Dr. Forsythe provided work restrictions.

Appellant accepted a modified job offer on January 28, 2021 performing limited duty as a mail handler.

By decision dated February 17, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the November 9, 2020 incident occurred, as alleged. It noted that she failed to respond to the questionnaire that was sent with the January 14, 2021 development letter. 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 FECA[3] 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 1.

[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. 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.[9]

## ***ANALYSIS***

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on November 9, 2020, as alleged.

On her Form CA-1 and subsequent December 17, 2020 narrative statement, appellant consistently reported that on November 9, 2020 she sustained a right knee injury due to picking up military bags while in the performance of duty. In a December 22, 2020 medical report, Dr. Forsythe noted that appellant alleged that she had sustained a work injury on November 9, 2020 while lifting a bag full of mail resulting in a pop and subsequent pain in her right knee. On January 6, 2021 he diagnosed a stress fracture of tibia and attributed her condition to the alleged November 9, 2019 employment incident. Likewise, Dr. Nopachai, in her December 18, 2020 report, noted that appellant first contacted her on November 11, 2020 and reported a November 9, 2020 work-related knee injury. As noted, an employee's statement alleging that an injury occurred

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

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.[10] Moreover, on the reverse side of the claim form the employing establishment acknowledged that appellant was injured while in the performance of duty. In a December 19, 2020 letter, L.H., appellant's supervisor, indicated that appellant had contacted her the day following the alleged November 9, 2020 employment incident and reported that she had injured her leg. For these reasons, the Board finds that this evidence of record is sufficient to establish that an employment incident occurred on November 9, 2020 as alleged.[11] Appellant has, thus, established the factual component of fact of injury.[12]

As appellant has established that the November 9, 2020 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.[13] Because OWCP found that she had not established fact of injury, it did not evaluate the medical evidence, and the case must, therefore, be remanded for consideration of the medical evidence of record.[14] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted November 9, 2020 employment incident.

## ***CONCLUSION***

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on November 9, 2020, as alleged. The Board further finds that this case is not in posture for decision regarding whether appellant has established an injury causally related to the accepted November 9, 2020 employment incident.

[10] *Id*.

[11] *See L.T.*, Docket No. 20-1499 (issued August 18, 2021); *C.R.*, Docket No. 20-1147 (issued January 5, 2021).

[12] *Id*.

[13] *See L.O.*, Docket No. 20-0280 (issued October 1, 2021); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, *supra* note 9.

[14] *Id*.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 17, 2021 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: January 27, 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