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C.B., Appellant)	
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and)	Docket No. 21-0554
)	Issued: June 21, 2022
DEPARTMENT OF VETERANS AFFAIRS,)	
WEST PALM BEACH VA MEDICAL CENTER,)	
West Palm Beach, FL, Employer)	
)	

Case Submitted on the Record

Office of Solicitor, for the Director

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

On February 24, 2021 appellant, through counsel, filed a timely appeal from a September 23, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on January 17, 2019, as alleged.

FACTUAL HISTORY

On August 28, 2019 appellant, then a 52-year-old certified nursing assistant, filed a traumatic injury claim (Form CA-1) alleging that on January 17, 2019 at approximately 2:00 p.m., she injured her right rib area while in the performance of duty. She explained that she was using a wheelchair to transport a patient's belongings to the locker room, and when she lifted a duffel bag from the wheelchair, she slipped and fell to the floor, landing on her right side. On the reverse side of the claim form P.S., appellant's supervisor, acknowledged that appellant was in the performance of duty when her injury occurred. However, P.S., further noted that her knowledge of the facts did not comport with appellant's statement. Appellant did not stop work.

In a development letter dated September 3, 2019, OWCP informed appellant that it had not received evidence in support of her traumatic injury claim. It informed her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a January 22, 2019 medical report, appellant informed Dr. Brand Gurney, Board-certified in family medicine, that on January 17, 2019 she was lifting a heavy bag when she felt a sharp pain in the right side of her lower back. On evaluation Dr. Gurney diagnosed lumbar strain and opined that there was a direct relationship between appellant's injury and her federal employment. In a form report of even date, he provided work restrictions.

In a January 22, 2019 form report, appellant explained that on January 17, 2019 at approximately 2:00 p.m. she was moving a duffel bag on the third floor and pulled a muscle on the right side of her rib area.

In a February 5, 2019 progress note, Dr. Gurney noted that appellant was still experiencing pain on the right side of her lower back and that she would continue seeking treatment from a private doctor. In a form report of even date, he again provided work restrictions.

In a March 25, 2019 diagnostic report, Dr. Richard Sarner, a Board-certified radiologist, performed a magnetic resonance imaging (MRI) scan of appellant's lumbar spine, observing an L2-3 posterolateral disc bulge, L4-5 disc dehydration with a broad-based posterior disc bulge, and an L5-S1 posterior midline disc protrusion/herniation.

OWCP received an April 9, 2019 light-duty job offer form which detailed work restrictions appellant had in relation to an April 4, 2019 work injury.

In an e-mail dated April 10, 2019, S.M., appellant's coworker, indicated that she had presented to the occupational health office that day, and informed her of a right shoulder injury she sustained on April 4, 2019, and an injury to her right rib area that she sustained on January 17, 2019. She noted that appellant had also presented to the office on January 17, 2019 alleging that she was moving laundry when she felt pain in her right-side rib area. S.M. explained

that her pain had not improved, and that she was now experiencing pain in her right shoulder. She provided appellant with information on how to file a Form CA-1.

In an August 26, 2019 diagnostic report, Dr. Sarner performed an MRI scan of appellant's cervical spine, revealing a reversal of the normal cervical lordosis, a C2-3 posterior disc bulge, C3-4 grade one retrolisthesis, a C4-5 broad-based posterior disc bulge, a C5-6 posterior disc herniation and a C6-7 broad-based posterior disc bulge.

Appellant submitted an August 29, 2019 duty status report (Form CA-17) with an illegible signature that indicated that she was injured on January 17, 2019 when she lifted a heavy laundry bag, slipped and fell.

In a subsequent August 30, 2019 e-mail, S.M. requested additional information from appellant's supervisor relating to the alleged January 17, 2019 employment incident.

In an August 30, 2019 letter, S.M. controverted appellant's claim, asserting that the validity of her claim was seriously compromised by her varying accounts of injury. She explained that, after she was informed that she would be relocated to a less-desirable work area on August 29, 2019, she elected to file a claim based on a "relatively minor" January 17, 2019 incident from which she had been previously treated and returned to normal work duty. S.M. alleged that, while appellant was filing her claim, she clearly expressed to her that she needed to avoid being reassigned. She noted that she had claimed a different mechanism of injury and a far more serious injury. S.M. observed that on her August 28, 2019 claim form appellant indicated that she slipped and fell when she was lifting a large duffel bag from a wheelchair. She asserted that she never mentioned a slip and fall incident when she originally informed her of the January 17, 2019 incident. S.M. also observed that appellant was now claiming an injury to her entire right side instead of just a muscle in her right rib area. She reviewed the history of appellant's injury, observing that on January 22, 2019 she informed Dr. Gurney that on January 17, 2019 she was moving laundry when she pulled a muscle on the right side of her rib. Appellant then changed her version of the story, claiming that she experienced a sharp pain in the right side of her lower back when she lifted a heavy duffel bag. She was evaluated by Dr. Gurney and provided work restrictions. Appellant did not file a claim at that time and was not seen by Dr. Gurney again after February 5, 2019. S.M. also discussed medical evidence appellant submitted that indicated that she would be unable to work from April 4 to May 16, 2019 due to a separate right shoulder injury. She alleged that appellant had altered the April 9, 2019 medical form from Dr. Gurney to extend her work restrictions beyond the time she was advised to make it appear as if her injury was more severe than it was. S.M. attached an e-mail from Dr. Gurney wherein he provided that he had not evaluated appellant since February 5, 2019, but that she presented medical evidence dated April 9, 2019 regarding her work restrictions.

In a September 9, 2019 Form CA-17, Dr. Steven Kanner, a Board-certified internist, indicated that appellant injured her "right mid to lower back" on January 17, 2019 when she was pushing a patient. He diagnosed a cervical disc disorder with radiculopathy and provided work restrictions.

In a September 23, 2019 letter, S.M. indicated that appellant had a preexisting neck condition and attached supporting medical evidence from September 8 to November 28, 2011.

She argued that appellant did not meet her burden of proof to establish her claim because the evidence did not show that her injury was caused by her employment.

Appellant also submitted evidence addressing an unrelated April 4, 2019 injury.

By decision dated October 11, 2019, 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 noted that the medical evidence and statements on file provided different histories of injury than the one she alleged in her Form CA-1. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In an October 22, 2019 letter, S.M. suggested that appellant should be returned to her regular employment duties as her claim was denied by OWCP on October 11, 2019. She recommended that appellant use her leave if she had continued medical limitations.

On October 24, 2019 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an October 24, 2019 medical note, Dr. Kanner recommended that appellant continue her light-duty assignment due to the injuries she sustained at work on January 17, 2019.

In an October 28, 2019 statement, appellant asserted that she developed cervical disc disorder and intervertebral disc disorder due to the alleged January 17, 2019 employment incident. She reviewed her history of employment and asserted that she did not have this condition prior to the alleged incident.

In a medical note of even date, Dr. Kanner diagnosed lumbar region intervertebral disc disorders with radiculopathy of the lumbar region, and cervical disc disorder with radiculopathy of the cervical region. He opined that her injury was caused by the January 17, 2019 employment incident, and suggested that she remain on light-duty assignment until her next scheduled appointment on December 9, 2019.

On January 14, 2020 appellant, through counsel, withdrew her request for an oral hearing and instead requested reconsideration of the October 11, 2019 decision.

In an April 4, 2020 medical report, Dr. Gerald Molloy, a Board-certified neurosurgeon, noted that appellant was injured at work on January 17, 2019 when she fell and hit her head on an oxygen tank and landed on wheelchair legs. On examination and review of diagnostic studies he diagnosed cervical stenosis, cervical spondylolisthesis, cervical radiculopathy, cervicalgia, myelopathy, lumbago, lumbosacral stenosis, lumbar radiculopathy, lumbosacral spondylolisthesis and sacroiliitis. Dr. Molloy opined that appellant's conditions were caused by the alleged January 17, 2019 employment incident, explaining that, when she lifted the heavy bag and tripped over something on the floor, the added force of the weight of the bag caused her to crash harder onto the floor. Appellant's lumbar region landed on an oxygen tank and broken walkers and caused a cervical whiplash injury. Dr. Molloy explained that the damage to appellant's lumbar and cervical discs, which caused her foraminal stenosis, was more than what would be expected in someone of her age and weight.

In an August 3, 2020 letter, Dr. Kanner explained that it was undetermined if appellant would be able to return to work following her surgery to treat the injuries she sustained on January 17, 2019. He requested that she be excused from work until January 1, 2021.

In an August 13, 2020 letter, S.M. attached a copy of Dr. Molloy's April 4, 2020 medical report and controverted the claim, noting that she never mentioned falling and hitting her head on an oxygen tank in any of her prior evidence.

On August 27, 2020 appellant, through counsel, again requested reconsideration of the October 11, 2019 decision. In an attached August 26, 2020 memorandum, she again explained the events of the alleged January 17, 2019 employment incident where she was using a wheelchair to transport a duffel bag to a storage room. When she lifted the duffel bag, she tripped over something on the floor and fell, landing on an oxygen tank, the wheelchair's legs and some broken walkers. Counsel indicated that these items fell on appellant's right side, injuring her rib area. She asserted that OWCP's October 11, 2019 decision should be overturned as she had submitted sufficient factual and medical evidence to warrant acceptance of her claim. Counsel further contended that appellant's statement was consistent with the original statement in her Form CA-1 and the medical evidence of record, reasoning that, while some of the statements went into more detail, all of her statements allege that she was injured when she slipped and fell in the storage room. She attached witness statements from appellant's coworkers that supported that her injury occurred at the time, place and in the manner she alleged. Counsel further indicated that she submitted a new statement from Dr. Kanner that clarified the earlier statements he made in his medical evidence.

In a February 28, 2020 statement, appellant explained that on January 17, 2019 she was transporting a large army duffel bag full of a patient's clothing with a wheelchair. When she attempted to lift the duffel bag she tripped on an object on the floor and fell, landing on an oxygen tank and the wheelchair legs. Appellant claimed that something hit the back side of her right rib area and her head. She claimed that M.F., another nursing assistant, then walked in and asked her what happened and advised her to go to employee health. T.B., an employee with environmental health, then walked in and helped transport her to the employee health station, where she was examined by Dr. Gurney.

In a separate statement also dated February 28, 2020, C.D., appellant's coworker, explained that she saw appellant and other coworkers walking down the hallway. She asked appellant what was wrong. Appellant informed her that she fell down on a wheelchair in the storage room and hit her head and her side.

In a March 3, 2020 statement, E.A., appellant's coworker, explained that during January 2019 he was walking in the hallway when he saw appellant walking and crying while T.B. was holding her. She informed him that she fell in the storage room when she was lifting a heavy duffel bag. T.B. then helped appellant to the employee health station.

In an August 12, 2020 letter, Dr. Kanner corrected the statements he provided in his September 9, 2019 Form CA-17, clarifying that appellant was lifting a laundry bag when her injury occurred and not transporting a patient with a wheelchair. He explained that, when he initially treated appellant, he misunderstood her explanation of the January 17, 2019 incident.

By decision dated September 23, 2020, OWCP denied modification of its October 11, 2019 decision.

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 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. The first component is that 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

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, 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 when there are such inconsistencies in the evidence as to cast serious doubt on 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 the employee's statements in determining whether a *prima facie* case has been established.⁹ An employee's

³ *Id.*

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).

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 *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

⁹ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *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.¹⁰

ANALYSIS

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on January 17, 2019, as alleged.

As noted above, 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 and persuasive evidence.¹¹ Herein, in her August 28, 2019 Form CA-1, appellant claimed that she was using a wheelchair to transport a patient's belongings to the locker room and when she lifted a large duffel bag from the wheelchair she slipped and fell to the floor, landing on her right side at approximately 2:00 p.m. She submitted a February 28, 2020 statement wherein she further clarified the events of the alleged January 17, 2019 employment incident. Appellant indicated that when she attempted to lift a duffel bag full of clothing she tripped on an object on the floor, landing on an oxygen tank and the wheelchair legs. She further detailed her injuries, noting that something hit the back side of her right rib area and head when she fell. Additionally, the witness statements from C.D. and E.A. both confirm that appellant informed her coworkers that she fell in the storage room and injured her right side when she attempted to lift a heavy duffel bag. Moreover, appellant sought prompt medical care, first with Dr. Gurney on January 22, 2019 where he observed that she injured the right side of her lower back while lifting a heavy duffel bag and diagnosed a lumbar strain, opining that her injury was caused by her employment activity.

The injuries appellant claimed are consistent with the facts and circumstances she set forth, statements from her coworkers, her course of action, and the medical evidence of record. Of note, Dr. Kanner submitted an August 12, 2020 letter in which he clarified that she injured her right mid-to-lower back while lifting a heavy duffel bag. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured while in the performance of duty. The Board, thus, finds that appellant has established that the January 17, 2019 employment incident occurred in the performance of duty as alleged.

As appellant has established that the January 17, 2019 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹² As OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.¹³ 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 January 17, 2019 employment incident, and any attendant disability.

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

¹¹ *Id.*

¹² *Id.*

¹³ *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on January 17, 2019, as alleged. The Board further finds that the case is not in posture for decision regarding whether she has established an injury causally related to the accepted January 17, 2019 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the September 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: June 21, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

A handwritten signature in black ink, appearing to read "J. D. McGinley", written in a cursive style.

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