United States Department of Labor
Employees' Compensation Appeals Board

S.K., Appellant	)	
and	)	**Docket No. 22-0235**
	)	**Issued: June 7, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Buffalo, NY, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 12, 2021 appellant filed a timely appeal from a September 20, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (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 his burden of proof to establish a traumatic injury in the performance of duty on February 5, 2021, as alleged.

[1] The Board notes that, following the September 20, 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*.

[2] 5 U.S.C. § 8101 *et seq*.

FACTUAL HISTORY

On February 17, 2021 appellant, then a 28-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 5, 2021 he sustained a left knee strain when he slipped on an icy driveway at 2:57 p.m. while in the performance of duty. On the reverse side of the claim form, appellant's supervisor indicated that his knowledge of the facts of this injury agreed with appellant's statements and that he was injured in the performance of duty. Appellant stopped work on February 6, 2021 and returned on February 9, 2021.

The employing establishment issued an authorization for examination and/or medical treatment (Form CA-16) on February 8, 2021. Appellant's date of injury was listed as February 5, 2021 and it was noted that appellant slipped on ice in a driveway and hurt his left knee.

In support of his claim, appellant submitted a doctor's initial report dated February 8, 2021 from Maureen Shea, a physician assistant, which related that appellant slipped and fell on ice that day while delivering mail. Ms. Shea diagnosed left knee strain. She indicated by checking a box marked "Yes" that the work incident caused appellant's injury and provided work restrictions.

Appellant submitted another note from Ms. Shea dated February 8, 2021. Ms. Shea diagnosed appellant with a strain of unspecified muscles and tendons in the left lower leg and provided appellant with work restrictions. In a form report dated February 8, 2021, Ms. Shea noted that appellant was seen that day for a work-related injury on February 5, 2021 when he slipped on ice while delivering mail. Appellant's diagnosis was listed as left knee sprain.

OWCP received a report dated February 8, 2021 from Dr. John M. Reiser, a Board-certified diagnostic radiologist. Dr. Reiser related that appellant slipped on ice and twisted his left knee but noted no fracture or dislocation.

In a note dated February 15, 2021, Dr. William M. Wind, Jr., Board-certified in orthopedic sports medicine and orthopedic surgery, provided appellant with work restrictions. He also provided a duty status report (Form CA-17) dated February 15, 2021, wherein he noted appellant's date of injury as February 5, 2021, and diagnosed left knee meniscus tear due to occupational stress. In follow-up notes dated March 3 and 17, 2021, Dr. Wind provided appellant with work restrictions.

In a development letter dated August 17, 2021, OWCP advised appellant regarding the deficiencies of his claim. It noted the type of factual and medical evidence needed and provided him with a questionnaire. OWCP afforded appellant 30 days to submit the necessary evidence. No response was received.

By decision dated September 20, 2021, OWCP denied appellant's claim as he had not established that the incident occurred as alleged, and 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 FECA, that the claim was timely filed within the applicable time limitation period 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 must first be determined whether a 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]

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 to establish the occurrence of an injury when there are inconsistencies in the evidence that 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 sufficient doubt on an 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] *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

[9] *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

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 his burden of proof to establish an incident in the performance of duty on February 5, 2021, as alleged.

Appellant alleged that he sustained a left knee injury on February 5, 2021 when he slipped and fell on ice while delivering mail. He initially sought medical care on February 5, 2021 and on February 8, 2021. Appellant's alleged slip and fall at work on February 5, 2021 was noted by his medical providers. Further, the employing establishment issued a Form CA-16 on February 8, 2021 noting his history of slip and fall on ice on February 5, 2021. Appellant's supervisor, on appellant's Form CA-1, acknowledged that his alleged injury occurred in the performance of duty on February 5, 2021. The incident appellant claimed was consistent with the facts and circumstances he set forth, his actions, the employing establishment's statements, and the medical evidence he submitted. The Board thus finds that he has met his burden of proof to establish an incident in the performance of duty on February 5, 2021, as alleged.

As appellant has established that the February 5, 2021 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.[11] As OWCP found that he had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's September 20, 2021 decision and remand the case for consideration of the medical evidence of record.[12] After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted February 5, 2021 employment incident.[13]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an incident in the performance of duty on February 5, 2021, as alleged. The Board further finds that the case is not in posture for decision regarding whether he has established an injury causally related to the February 5, 2021 employment incident.

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

[11] *See M.H.*, Docket No, 20-0576 (issued August 6, 2020); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

[12] *M.H., id.*; *M.F.*, Docket No. 19-0578 (issued January 26, 2021); *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

[13] The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 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: June 7, 2022
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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