United States Department of Labor
Employees' Compensation Appeals Board

B.S., Appellant	)	
and	)	**Docket No. 21-1414**
	)	**Issued: November 23, 2022**
DEPARTMENT OF VETERANS AFFAIRS, BROCKTON VA MEDICAL CENTER, Brockton, MA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 24, 2021 appellant filed a timely appeal from a May 13, 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on August 23, 2020, as alleged.

FACTUAL HISTORY

On August 31, 2020 appellant, then a 62-year-old food service worker, filed a traumatic injury claim (Form CA-1) alleging that on August 23, 2020 at 9:05 a.m. she sustained injuries to

[1] 5 U.S.C. § 8101 *et seq*.

her right thumb and hand when a coworker, D.B., slammed a freezer door in her face while in the performance of duty.[2] On the reverse side of the claim form the employing establishment's chief of nutrition and food service, N.L., checked a boxed mark "No," indicating that appellant was not in the performance of duty when the incident occurred. Appellant stopped work on August 26, 2020.

In letters of controversion dated September 8, 2020, the employing establishment indicated that it was challenging appellant's claim because witness statements did not support that an incident occurred, as alleged.

In a September 11, 2020 development letter, OWCP informed appellant of the deficiencies of her claim, advised her of the type of factual and medical evidence necessary to establish her claim, and provided a factual questionnaire for her. It afforded her 30 days to submit the necessary evidence.

OWCP thereafter received reports of contact and an e-mail dated August 19, 2020 by N.L. regarding her investigation into a separate incident reported by another employee, M.B. N.L. noted that M.B. related that on August 19, 2020 appellant pulled out a pin that attached food carts to M.B.'s truck, and then started yelling and accusing M.B. of trying to break her arm.

In an e-mail to employing establishment supervisors dated August 21, 2020, D.B. reported that on August 20 and 21, 2020 appellant had been speaking negatively about her, interfering with her schedule and assignments, and intentionally not completing appellant's duties, which left D.B. with extra work to complete during her shift. She requested that they not be assigned to work together and that management provide extra supervision.

In a report dated August 23, 2020, Sergeant (Sgt.) J.G., a member of the employing establishment police department, indicated that at 9:32 a.m., appellant reported that she was working in Building 7 and went downstairs to retrieve nourishments from the walk-in cooler. He noted that she indicated that D.B. was already inside the cooler, hurried in front of her to leave, and slammed the cooler door in her face, which struck her already injured right hand. Sgt. J.G. further noted that appellant stated that she did not report the incident to her supervisor due to a prior ongoing investigation. He then spoke with L.C., an employing establishment supervisor, who indicated that D.B. was assigned to Building 2 that day. L.C. also related that D.B. had recently made an official complaint against appellant. Sgt. J.G. then spoke with D.B., who described the issues that led to her recent complaint, and indicated that she believed she was retaliating against her for making the complaint. D.B. indicated that she was never in Building 7 on August 23, 2020 and did not close a cooler door on appellant. Sgt. J.G. closed the case after these interviews.

In an e-mail to N.L. on August 23, 2020 at 1:58 p.m., appellant reported that she was retrieving nourishments for Building 7 from a cooler in Building 20, and that D.B. shut the cooler

[2] OWCP assigned the present claim OWCP File No. xxxxxx023. Appellant also filed a traumatic injury claim (Form CA-1) on August 21, 2020 for an August 2, 2020 crush injury to the right thumb, requiring surgery, which OWCP assigned File No. xxxxxx788 and denied by decision dated October 5, 2020. OWCP administratively combined File Nos. xxxxxx023 and xxxxxx788, with the former serving as the master file.

door in her face, which struck the right side of her body and reinjured her right hand. She related that she went upstairs to send N.L. an e-mail to report the incident, but did not do so because she felt L.C. was trying to look at what she was typing.

In a medical note dated August 23, 2020, Dr. Young Soo Song, a Board-certified nephrologist and internal medicine specialist, indicated that appellant related left-hand pain, which she attributed to someone slapping a refrigerator door at work, which caught her left thumb. He referred her for x-rays of the right hand, which showed a minimally displaced fracture of the base of the distal phalanx of the first digit.

In an e-mail to N.L. dated August 24, 2020, D.B. noted that on August 23, 2020, she began work in Building 2 at 6:00 a.m. Before delivering her Building 2 trucks, she retrieved nourishments from Building 20, and then delivered trucks in Building 2 from 9:20 to 10:00 a.m. D.B. further related that at 11:30 a.m., she received a call from L.C. advising her that the employing establishment police department needed to question her about an incident, which had occurred that morning. She indicated that she was confused, because she did not know what they were talking about, but completed her duties and went over to answer the questions. D.B. noted that the officer informed her of the allegations. She further noted that she told the officer that appellant's claim was not true, that she had no contact with appellant, and that she believed appellant was trying to get her into trouble.

In a medical note dated September 10, 2020, Dr. Harry Katz-Pollack, a Board-certified internist, indicated that appellant reported complaints of right thumb pain, which she attributed to an incident, which occurred at work on August 2, 2020. He diagnosed a fracture of the right thumb and referred her to orthopedics.

Appellant thereafter submitted an undated statement describing the August 23, 2020 incident and her medical treatment, including the September 10, 2020 visit with Dr. Katz-Pollack and an upcoming orthopedic consultation on October 21, 2020.

OWCP also received statements and e-mails from the employing establishment dated August 31 and September 18, 2020 indicating that appellant had accused Z.K., an employing establishment human resources specialist, of instructing her to tell her providers to submit bills for treatment for the alleged August 23, 2020 injury under the claim number for the August 2, 2020 injury. Z.K. denied giving her such instruction.

By decision dated October 23, 2020, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred as alleged. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence, including an additional statement by appellant indicating that on August 2, 2020, she jammed her right hand in Building 2 while trying to remove a water pillow that was wedged between the docking station and a foot cart. Attached to the statement were copies of e-mails she exchanged with the employing establishment regarding filing a claim for that incident.

In a note dated August 6, 2020, Dr. Simon Cornelissen, a Board-certified orthopedic surgeon, indicated that x-rays of appellant's right hand were negative for fracture or dislocation.

OWCP thereafter received appellant's signed voluntary statement to the employing establishment police department dated August 23, 2020. She reported that she was working in Building 7 and went downstairs to retrieve nourishments from the walk-in cooler. Appellant further related that D.B. was already inside the cooler, hurried in front of appellant to leave, and slammed the cooler door in appellant's face, which struck appellant's "injured right hand." She explained that she did not report the incident to her supervisor, due to an ongoing investigation, and that she would be seeking treatment at urgent care. Appellant also wrote "no" that she did not need to add or delete any further information from her statement.

In an e-mail dated August 25, 2020, Z.K. related that she met with L.C. that day, who indicated that she had no knowledge of the August 23, 2020 incident, that she had seen appellant typing on a computer at the end of her shift, and that she had previously assigned appellant to work in Building 7 and D.B. to work in Building 2 to keep them separated.

A report of x-ray dated September 10, 2020 noted a fracture at the base of the distal phalanx of the right thumb.

In a November 3, 2020 medical note, Dr. Cornelissen noted a diagnosis of right thumb distal phalanx fracture/crush injury. He recommended light-duty restrictions effective November 9, 2020.

On November 19, 2020 appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Appellant thereafter submitted additional statements regarding the August 19, 2020 incident with M.B., her police report on August 23, 2020, her review of D.B.'s August 24, 2020 e-mail, and her review of the employing establishment's evidence. She also submitted copies of requests under the Freedom of Information Act (FOIA), and photographs of the cooler in Building 20, a row of towed food carts, and L.C.'s work area.

In a letter dated December 22, 2020, the employing establishment summarized its investigation into appellant's August 2 and 23, 2020 claims and noted various inconsistencies.

A telephonic hearing was held on March 5, 2021. Appellant testified that she received minimal medical care and did not lose time from work as a result of the August 2, 2020 incident, and that she filed a claim for that injury on August 21, 2020 because she was instructed to do so. She denied any wrongdoing or injury in relation to the incident on August 19, 2020 with M.B., and indicated that another coworker had intentionally sabotaged her work area and that the employing establishment separated them on the morning of August 23, 2020. Appellant also noted that references to an injury to her left hand were incorrect, and that her right thumb was injured on August 23, 2020.

After the hearing, OWCP received three Occupational Safety and Health Administration (OSHA) illness and injury reports, one dated August 24, 2020 for an August 2, 2020 right thumb injury and one dated September 10, 2020 for an August 1, 2020 right thumb injury. Both forms

describe an incident where appellant jammed her right thumb while trying to remove a water pillow. The third report was dated September 2, 2020 and described an August 23, 2020 right thumb injury.

OWCP also received e-mails dated October 8, 2020 from N.L. to Z.K. indicating that N.L. submitted a fact finding request on August 14, 2020 in order to interview appellant to investigate a claim that on August 1, 2020 appellant had returned to campus after the end of her shift to use a computer to write/send e-mails under another employee's account. N.L. noted that she also made a request for an administrative investigation to address concerns of her of stealing surgical masks.

By decision dated May 13, 2021, OWCP's hearing representative affirmed OWCP's October 23, 2020 decision.

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 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]

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

[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).

[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).

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 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 not met her burden of proof to establish a traumatic injury in the performance of duty on August 23, 2020, as alleged.

In her statement dated August 23, 2020, appellant described working in Building 7 and that she walked "downstairs" to retrieve something from the cooler and encountered D.B. who was already there. She related that D.B. slammed the cooler door in her face, and that it struck her right hand. In an e-mail to N.L. later that same day, appellant alleged that D.B. slammed the refrigerator door on appellant's right hand. However, the employing establishment police department investigated appellant's allegations and interviewed D.B. and L.C., who contended that D.B. was not in Building 7 and did not have contact with appellant on August 23, 2020. As noted, 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 or persuasive evidence.[11] The Board finds that the statements of appellant's coworkers are strong and persuasive and, as a result, these statements and evidence refute appellant's allegations.[12]

The Board, therefore, finds that appellant has not established that she sustained an injury in the performance of duty on August 23, 2020, as alleged.

As appellant has not met her burden of proof to establish that an incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.[13]

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.

[9] *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

[10] *L.M.*, Docket No. 21-0109 (issued May 19, 2021); *F.H.*, *supra* note 4; *J.P.*, *supra* note 4; *Joe D. Cameron*, *supra* note 4.

[11] *Id*.

[12] *Id*.

[13] *J.C.*, Docket No. 19-0542 (issued August 14, 2019).

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on August 23, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the May 13, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 23, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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