



## **FACTUAL HISTORY**

On May 23, 2021 appellant, then a 33-year-old postal distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 17, 2021 she strained her left shoulder and chest wall as a result of “doing [her] assignment in front of automation” while in the performance of duty. She noted that she “[did] not know the moment of [her] injury.” Appellant stopped work on May 22, 2021.

In a May 22, 2021 report, Mary Kidwell, a physician assistant, indicated that appellant was evaluated for complaints of a left shoulder injury “from repetitive heavy lifting motion.” She noted a date of injury of May 17, 2021. Ms. Kidwell conducted an examination and diagnosed left shoulder strain and chest wall muscle strain.

Appellant submitted reports and work status notes dated May 22 through June 14, 2021, signed by Elsa Cuellar and Dr. Gregory Hoversten, an osteopath specializing in family medicine. Dr. Hoversten recounted appellant’s complaints of continued left shoulder pain and noted a May 17, 2021 injury date. He provided examination findings and diagnosed chest wall muscle strain and left shoulder strain.

Ms. Cuellar also completed duty status reports (Form CA-17) dated May 24 and 31 and June 14, 2021, which noted that appellant worked as a clerk. In response to the question about description of the injury, she indicated “reason unknown.”

In a report dated June 21, 2021, Dr. Joan Leaks, a family medicine specialist, indicated that appellant was evaluated for continued left shoulder pain. She reported left shoulder examination findings of tenderness in the subacromial bursa and full range of motion with pain. Dr. Leaks diagnosed chest wall muscle strain and left shoulder strain. She provided additional reports, work status notes, and CA-17 forms dated June 28 through July 27, 2021 regarding treatment of appellant’s left shoulder symptoms.

In a report and Form CA-17 dated July 6, 2021, Dr. Matthew Reardon, Board-certified in occupational medicine, noted that appellant’s injury occurred on May 17, 2021. He conducted an examination and diagnosed chest wall muscle strain and left shoulder strain. Dr. Reardon noted “reason unknown” regarding how the injury occurred.

In reports and work status notes dated July 13 through August 3, 2021, Conrado Ferrer, a certified physician assistant, evaluated appellant for continued left shoulder pain. He noted an injury date of May 17, 2021 and indicated that appellant was “performing functions of her job.” Mr. Ferrer provided examination findings and diagnosed chest wall muscle strain and left shoulder strain.

In an August 5, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised 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 provide the necessary evidence.

In reports and Forms CA-17 dated August 10 and 17, 2021, Dr. Paul Reehal, Board-certified in family medicine, noted a May 17, 2021 injury date and reported that appellant was at

work when she developed left shoulder and chest wall pain. He indicated that appellant did not know of any specific event that triggered the pain, but noted that her work duties involved lifting heavy mail containers. Dr. Reehal conducted an examination and diagnosed left shoulder strain and chest wall muscle strain.

On August 27, 2021 OWCP received appellant's response to its August 5, 2021 development letter. Appellant indicated that she believed she sustained both an occupational and traumatic injury. She explained that she began to have pain in her left shoulder when she went home after her work shift and took pain medication. Appellant reported that when the pain continued, she went to urgent care on May 20, 2021 and was told that she had a rotator cuff issue.

Appellant submitted emergency room records dated May 20, 2021, cosigned by Clarke Lunt, a physician assistant, and Dr. Michael Hixson, Board-certified in emergency medicine. Dr. Hixson indicated that appellant presented in the emergency department for left shoulder pain and recounted that she "did a strenuous job while she was working at the [employing establishment] when she did a lot of heavy lifting." He diagnosed left shoulder pain.

In a separate claim form signed by appellant on May 22, 2021, she noted an injury date of May 17, 2021 and that she was employed by the employing establishment. She indicated that at the time of the injury she was "doing operation 481."

By decision dated September 7, 2021, OWCP denied appellant's claim, finding that the factual component of fact of injury had not been established. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted reports and work status notes dated August 25 and September 7, 2021 by Dr. Leaks who indicated that appellant was evaluated for follow up of her left shoulder. Dr. Leaks provided examination findings and diagnosed left shoulder strain, chest wall muscle strain, and internal derangement of the left shoulder.

On October 2, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review and submitted additional medical evidence.

In a letter dated December 13, 2021, OWCP's hearing representative advised appellant that a telephonic hearing would be held on January 27, 2022 at 3:00 p.m. Eastern Standard Time (EST). The hearing representative also provided appellant with a toll-free telephone number and passcode to access the hearing. The hearing representative mailed the notice to appellant's last known address of record. Appellant did not appear for the hearing by telephone at the appointed time and no request for postponement was made.

By decision dated February 7, 2022, OWCP found that appellant failed to appear at the telephonic hearing and abandoned her request. It noted that a hearing was scheduled to be conducted by telephone on January 27, 2022 and that she received written notification of the hearing 30 days in advance of the hearing. Next, OWCP indicated that appellant failed to appear for the hearing and there was no indication in the file that she contacted it either prior to or subsequent to the scheduled hearing to request a postponement or explain her failure to appear.

## LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA<sup>2</sup> 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,<sup>3</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>4</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>5</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.<sup>6</sup> 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. Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> Such 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 serious doubt on an employee's statement in determining whether a *prima facie* case has been established.<sup>10</sup> An employee's statement

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<sup>2</sup> *Supra* note 1.

<sup>3</sup> *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>4</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>6</sup> *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

<sup>9</sup> *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>10</sup> *L.D.*, Docket No. 16-0199 (issued March 8, 2016), *Betty J. Smith, id.*

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.<sup>11</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on May 17, 2021, as alleged.

Appellant filed a traumatic injury claim on June 1, 2021, wherein she alleged that she strained her left shoulder and chest wall as a result of “doing [her] assignment in front of automation.” She submitted a separate claim form signed on May 22, 2021, wherein she noted an injury date of May 17, 2021, and indicated that at the time of the injury she was “doing operation 481.” In response to OWCP’s development letter, appellant further explained that she began to experience left shoulder pain when she went home after work. She indicated that she believed that she sustained both an occupational and traumatic injury claim. The Board finds, however, that appellant’s description of the traumatic injury is imprecise and vague and fails to establish that a traumatic incident occurred in the performance of duty as alleged.<sup>12</sup> Appellant provided no additional details or information sufficient to determine the circumstances surrounding her claimed injury on May 17, 2021.<sup>13</sup> The Board has found that a vague recitation of the facts does not support an appellant’s allegation that a specific incident occurred, which caused a work-related injury.<sup>14</sup>

OWCP also received medical reports dated May 20 through September 7, 2021. While the reports noted a May 17, 2021 injury date and indicate that appellant’s work duties involved heavy lifting, they provided no further description of how the alleged injury occurred. Accordingly, these reports are insufficient to establish the factual component of appellant’s claim.<sup>15</sup>

As the evidence of record is insufficient to establish that the incident occurred 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.<sup>16</sup>

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<sup>11</sup> See *J.B.*, Docket No. 19-1487 (issued January 14, 2020); *W.C.*, Docket No. 18-1651 (issued March 7, 2019).

<sup>12</sup> See *M.E.*, Docket No. 21-1328 (issued April 18, 2022).

<sup>13</sup> See *L.E.*, Docket No. 21-0847 (issued February 16, 2022); see also *L.M.*, Docket No. 21-0109 (issued May 19, 2021).

<sup>14</sup> *L.M.*, Docket No. 20-1592 (issued May 3, 2021); *R.P.*, Docket No. 19-1233 (issued November 19, 2019); see also *K.S.*, Docket No. 17-2001 (issued March 9, 2018).

<sup>15</sup> See *M.E.*, Docket No. 20-1336 (issued July 2, 2021); *S.Z.*, Docket No. 19-1125 (issued October 22, 2020).

<sup>16</sup> To the extent that appellant is alleging an injury that occurred over more than one workday or work shift, she may file a Form CA-2 with OWCP.

## LEGAL PRECEDENT -- ISSUE 2

Under FECA and its implementing regulations, a claimant who has received a final adverse decision by OWCP is entitled to receive a hearing by writing to the address specified in the decision within 30 days of the date of the decision for which a hearing is sought.<sup>17</sup> Unless otherwise directed in writing by the claimant, OWCP's hearing representative will mail a notice of the time and place of the hearing to the claimant and any representative at least 30 days before the scheduled date.<sup>18</sup> OWCP has the burden of proof to establish that it properly mailed to a claimant and any representative of record a notice of scheduled hearing.<sup>19</sup>

A claimant who fails to appear at a scheduled hearing may request in writing, within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference.<sup>20</sup> The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing.<sup>21</sup>

## ANALYSIS -- ISSUE 2

Following OWCP's September 7, 2021 decision denying appellant's traumatic injury claim, appellant filed a timely request for an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a December 13, 2021 letter, OWCP's Branch of Hearings and Review notified her that it had scheduled a telephonic hearing for January 27, 2022 at 3:00 p.m. EST. OWCP mailed the notice to appellant's last known address of record. The Board has held that absent evidence to the contrary, a letter properly addressed and mailed in the ordinary course of business is presumed to have been received. This is called the mailbox rule.<sup>22</sup> Appellant failed to call in for the scheduled hearing using the provided telephone number. She did not request a postponement or provide an explanation to OWCP for failure to appear for the hearing within 10 days of the scheduled hearing. As appellant failed to call in to the scheduled hearing or provide notification to OWCP's Branch of Hearings and Review within 10 days of the scheduled hearing

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<sup>17</sup> 20 C.F.R. § 10.616(a).

<sup>18</sup> *Id.* at § 10.617(b).

<sup>19</sup> *V.C.*, Docket No. 20-0798 (issued November 16, 2020); *M.R.*, Docket No. 18-1643 (issued March 1, 2019); *T.P.*, Docket No. 15-0806 (issued September 11, 2015); *Michelle R. Littlejohn*, 42 ECAB 463 (1991).

<sup>20</sup> 20 C.F.R. § 10.622(f).

<sup>21</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.6(g) (September 2020); *see also K.H.*, Docket No. 20-1198 (issued February 8, 2021); *A.J.*, Docket No. 18-0830 (issued January 10, 2019).

<sup>22</sup> *E.G.*, Docket No. 20-1184 (issued March 1, 2021); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

explaining failure to appear, the Board finds that OWCP properly determined that she abandoned her request for an oral hearing.<sup>23</sup>

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on May 17, 2021, as alleged. The Board further finds that OWCP properly determined that she abandoned her request for an oral hearing.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 7, 2021 and February 7, 2022 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: September 28, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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

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<sup>23</sup> See *L.L.*, Docket No. 21-1194 (issued March 18, 2022); *L.T.*, Docket No. 20-1539 (issued August 2, 2021).