

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

L.A., Appellant

and

**U.S. POSTAL SERVICE, PITTSBURGH POST
OFFICE, Pittsburgh, PA, Employer**

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**Docket No. 22-1137
Issued: April 20, 2023**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 24, 2022 appellant filed a timely appeal from a July 1, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 that a traumatic incident occurred in the performance of duty on May 20, 2022, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the July 1, 2022 decision, appellant submitted additional evidence to OWCP. 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 May 23, 2022 appellant, then a 42-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on May 20, 2022 “[appellant and a coworker] were sweeping the LNC machine and [the] employee driving the ... machine from maintenance hit the nutting truck from the right side of [appellant], [appellant] was jerked hard, felt like whiplash. [Appellant] even pushed into [her coworker].” On the reverse side of the claim form appellant’s supervisor, B.Z., acknowledged that appellant was injured while in the performance of duty and noted that his knowledge of the facts about the injury conformed with her statements. Appellant stopped work on May 21, 2022.

On May 23, 2022 Clare M. Palmatier, a physician assistant, treated appellant and returned her to work without restrictions.

In a development letter dated May 26, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the factual and medical evidence necessary to establish her claim and provided a questionnaire. OWCP afforded appellant 30 days to provide the necessary information.

On May 21, 2022 Sandra Patchel, a nurse practitioner, treated appellant and returned her to work in two days. On May 24, 2022 Timothy D. Schrank, a nurse practitioner, treated appellant and returned her to work without restrictions on May 25, 2022. Similarly, on May 27, 2022 Lisa L. Dewees, a nurse practitioner, treated appellant on May 24, 2022 for an ongoing chronic health condition with a recent flare-up. She excused appellant from work from May 25 and 26, 2022.

In a triage nurse activity log dated June 2, 2022, Allyne Rech, a nurse case manager, noted that appellant reported having migraine headaches and cervical spasms since an injury on May 20, 2022 that prevented appellant from returning to work. She indicated that appellant remained off work and was undergoing medical care. The nursing triage case was closed June 2, 2022 as appellant did not return to work.

On June 29, 2022 K.E., an employing establishment human resource specialist, controverted appellant’s claim, asserting that she alleged an employment incident on May 20, 2022; however, appellant failed to provide medical evidence to support fact of injury and causal relationship. He concluded that she had not met her burden of proof in establishing a work-related condition.

By decision dated July 1, 2022, 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 she had not responded to its May 26, 2022 development questionnaire or provided information clarifying the alleged May 20, 2022 employment incident. 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 FECA³ has the burden of proof to establish the essential elements of his or her claim, including the fact 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 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 fact of injury has been established.⁷ Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

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.¹⁰ The employee has not met his or her burden of proof in establishing the occurrence of an injury when there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹¹ 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. An employee's

³ *Supra* note 1.

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁹ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ See *V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

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.¹²

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that a traumatic employment incident occurred in the performance of duty on May 20, 2022, as alleged.

The record establishes that on May 20, 2022 a machine operator struck a nutting machine truck that was located in close proximity to appellant's right side causing her to be jerked and pushed into her coworker while in the performance of duty. Appellant reported sustaining face, right shoulder, and a neck injury after the whiplash incident. Appellant's supervisor, B.Z., acknowledged on the Form CA-1 that appellant's injury occurred in the performance of duty and that his knowledge of the facts about this injury conformed with the statements of the employee. Additionally, in a triage nurse report dated June 2, 2022, Ms. Rech, a nurse case manager, noted that appellant reported having migraine headaches and cervical spasms since an injury on May 20, 2022 that prevented her from returning to work. She indicated that appellant remained off work and was undergoing medical treatment.

Additionally, the medical evidence supports that appellant promptly sought treatment the day after the alleged May 20, 2022 incident. The record reveals that appellant was treated by S.P., a nurse practitioner, on May 21, 2022 who excused appellant from work that day.

The injuries appellant claimed are consistent with the facts and circumstances she set forth, statements from supervisor, and her course of action. As noted above, the 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.¹³ 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.¹⁴ The Board thus finds that appellant has met her burden of proof to establish that the May 20, 2022 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the May 20, 2022 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁵ As OWCP found that she had not established an employment incident, the case will be remanded for OWCP to determine whether she sustained an injury casually related to the accepted employment incident. Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹² See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ *Supra* note 11.

¹⁴ See *supra* note 12.

¹⁵ See *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the May 20, 2022 employment incident occurred in the performance of duty, as alleged. The Board further finds that the case is not in posture for decision regarding whether she sustained an injury causally related to the accepted employment incident.

ORDER

IT IS HEREBY ORDERED THAT the July 1, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: April 20, 2023
Washington, DC

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

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

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