

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on January 24, 2021, as alleged.

FACTUAL HISTORY

On February 16, 2021 appellant, then a 34-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 24, 2021 he sustained a left middle back contusion when he slipped on icy slush and landed on his right leg and arm while in the performance of duty. On the reverse side of the claim form, L.S., appellant's supervisor, acknowledged that appellant was in the performance of duty and indicated that the employing establishment received notice on February 16, 2021.

In an accompanying undated statement, appellant reiterated his history of injury. He also noted that his injury occurred on Falls Road. Additionally, appellant indicated that on the next day following his alleged injury, he experienced tremendous pain in his left rear ribs near his back.

In a February 9, 2021 statement, Postmaster M.R., related that at 9:12 a.m. on January 24, 2021 she received a text message from appellant regarding his displeasure with his assigned route. She contacted Postmaster S.S., who was on duty on that day, and asked her to ensure that appellant received help with his route from other carriers. On Monday, January 25, 2021 Postmaster M.R. received another text message from appellant at 7:42 a.m. who related that he had slipped at the end of delivering parcels the day prior. He thought he was fine but, he woke up sore. Appellant related that he was unable to deliver his route. He also did not report to work on Tuesday, January 26, 2021. Appellant returned to work on Wednesday, January 27, 2021 and delivered his assigned route without issue. When he returned from his route, he reported that he was a little sore, but declined to seek medical treatment. Postmaster M.R. then instructed appellant to prepare a statement regarding his alleged injury. On Thursday, January 28, 2021 at 9:16 a.m. she received a text message from him indicating that he had a rough night and his girlfriend had taken him to the hospital. Appellant had unidentifiable damage to his fifth rib. On Sunday, February 7, 2021 appellant texted Postmaster M.R. to notify her that he was treated at urgent care because his left lung was filled with fluid. Postmaster M.R. concluded that she doubted the validity of appellant's statements as he did not report his injury on the alleged date of injury.

In a February 9, 2021 e-mail, Postmaster S.S., indicated that she was the supervisor in charge on January 24, 2021. She noted that on that date, appellant was unhappy with his route. Postmaster S.S. related that he reported having problems on his route, including problems with his scanner. She noted that when he returned from his route around 2:00 p.m. he showed no signs of an injury or a fall. Appellant signed out and left work.

In a February 11, 2021 letter, Marie L. Bruce, an advanced practice registered nurse, noted that on February 7, 2021 appellant was admitted to the hospital under the care of Dr. Dennis Zagrodnik, II, a general surgeon, and required surgical intervention. She advised that his injuries were "presumed to be as a result of a fall he sustained while at work."

In a February 12, 2021 letter, L.S., a human resources management specialist, advised that the employing establishment was challenging appellant's claim for a January 24, 2021 injury because appellant had not established fact of injury. She contended that an accompanying

statement from Postmaster M.R. indicated that no packages were listed to be delivered on Falls Road on the alleged date of injury and that appellant did not like his assignment, which was demonstrated by his actions and behavior. L.S. further contended that Ms. Bruce's February 11, 2021 letter was insufficient to establish causal relationship between appellant's claimed injury and work duties as it did not provide a medical diagnosis and "presumed" that appellant's condition resulted from a fall at work.

OWCP, by development letter dated February 17, 2021, advised appellant of the deficiencies of his claim. It requested that he submit additional factual and medical evidence and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received medical evidence, including a February 8, 2021 consultation report from Dr. Thomas A. Taft, Board-certified in infectious disease and internal medicine. Dr. Taft noted that appellant was admitted to the hospital on February 7, 2021 with complaints of fever and chills with dyspnea following a fall about two weeks ago. He related that appellant worked at the employing establishment and on January 24, 2021 appellant suffered a fall when he slipped on slushy ice and landed on his right side at work. Appellant felt okay on the date of injury, but subsequently received medical treatment. Dr. Taft discussed his examination findings and provided an impression of improved left hydropneumothorax status post left chest tube placement. He also provided assessments, which included trauma on the right side, but noted that appellant presented with left-sided loculated effusion. Dr. Taft further noted that the sequence of events was unclear, but given appellant's appearance, this appeared to be hemothorax with secondary anaerobic process development leading to loculated pleural effusion.

By decision dated March 23, 2021, OWCP denied appellant's traumatic injury claim, finding that the alleged January 24, 2021 employment incident did not occur as he described. It noted that he had not responded to the February 17, 2021 development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On April 19, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review regarding the March 23, 2021 decision. During the hearing, appellant testified that, as he was walking up to the delivery address, he noticed that the walkway was a little slick. As he returned to his vehicle and took a step with his right leg, he slipped and "kind of" caught himself with his right arm, but landed on his right leg and arm. Appellant testified that he did not feel bad at the time of the incident. Since it was a Sunday, a busy day at the employing establishment, he did not want to bother anyone with a minimal matter. However, 18 hours later, he informed his postmaster of the injury and gave her a written statement.

Appellant also submitted a completed OWCP development questionnaire dated April 19, 2021 wherein he indicated that he first received medical treatment on January 27, 2021 by Dr. Erik P. Gierahn, an emergency medicine specialist.

OWCP also received additional medical evidence. In provider notes dated January 28, 2021, Dr. Erik P. Gierahn, Board-certified in emergency medicine, noted that appellant presented to the emergency department with a chief complaint of pain in his left lateral rib area. Appellant reported that he slipped and fell on the ice several days ago. He discussed his examination findings and diagnosed bruised left rib, initial encounter.

In a March 23, 2021 note, Dr. Dennis F. Zagrodnik, II, Board-certified in general surgery, noted that beginning on February 7, 2021 appellant was treated for left empyema and hemopneumothorax, which subsequently required hospitalization and surgical intervention. He advised that appellant's condition was a direct result of his trauma (fall on ice) while he was working approximately two weeks ago prior to his hospitalization.

In a March 25, 2021 letter, Jeremy Wojtecki, a physician assistant, related a history that on January 24, 2021 appellant slipped on a sidewalk and fell onto his right side. He advised that appellant sustained a small venous bleed in his left pleural space with subsequent infection developing into a large empyema. Mr. Wojtecki noted that the etiology of appellant's left side issues was curious as he suffered a fall on his right side. He related that the etiology of the left-sided empyema was a suspected sheer injury to the venous system in the left pleural chest as a "contra coup" type injury leading to a slow venous leak of blood into the venous space. Mr. Wojtecki related that this made the most sense since a chest x-ray obtained three days after appellant's fall showed the development of left basilar effusion that the reading physician noted as possible hemothorax related. Additionally, he related that appellant had a significant amount of bloody outlet with his initial chest tube which appeared to be older blood.

A telephonic hearing was held on August 4, 2021.

By decision dated October 19, 2021, OWCP's hearing representative affirmed the March 23, 2021 decision, finding that the evidence of record was insufficient to establish that the incident occurred on January 24, 2021, as alleged.

On April 25, 2022 appellant, through counsel, requested reconsideration. In support of his request, appellant submitted a March 10, 2022 narrative report from Dr. Neil Allen, a Board-certified internist and neurologist. Dr. Allen noted that he had reviewed appellant's medical records. He further noted that appellant related a history that during his last delivery at work on January 24, 2021 he slipped and then lost his balance and fell hard onto his right arm and right leg. Appellant also related that during the evening on that same date, he experienced worsening pain over the left side of his back, which rendered him unable to work for two days. He returned to work on January 27, 2022, but sought medical treatment. Dr. Allen advised that the acceptance of appellant's claim should be expanded to include empyema and hydropneumothorax. He related that appellant denied having symptoms prior to his work-related fall on January 24, 2021. Dr. Allen opined that appellant's diagnosed conditions were directly caused by the January 24, 2021 work-related fall.

By decision dated July 11, 2021, OWCP denied modification of the October 19, 2021 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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

⁴ *Id.*

limitation of FECA,⁵ 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.⁶ 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.⁷

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.⁸ 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.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 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.¹¹ 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.¹² An employee's statement 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.¹³

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁹ *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).

¹⁰ *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

¹¹ *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

¹² *L.D.*, Docket No. 16-0199 (issued March 8, 2016), *Betty J. Smith, id.*

¹³ *See M.V.*, Docket No. 19-1040 (issued August 12, 2022); *J.B.*, Docket No. 19-1487 (issued January 14, 2020); *M.S.*, Docket No. 22-0106 (issued August 9, 2022); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *W.C.*, Docket No. 18-1651 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on January 24, 2021, as alleged.

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.¹⁴ In his February 16, 2021 Form CA-1 and undated statement, as well as during his testimony on August 4, 2021, appellant alleged that on January 24, 2021 he sustained a left middle back contusion and left rib injury when he slipped on icy slush and landed on his right leg and arm while in the performance of duty. Although the employing establishment challenged the factual basis of his claim, it failed to provide persuasive evidence contradicting his account. The primary basis for the challenge was that appellant did not report his injury on the date of injury. However, appellant explained that he did not initially think that he had sustained a serious injury. Moreover, although L.S. indicated that the employing establishment did not receive notice of appellant's injury until February 1, 2021, Postmaster M.R. related that appellant informed her by text message on January 25, 2021 that he had slipped at the end of delivering parcels on January 24, 2021. A delay in reporting of less than one day is not persuasive evidence refuting his account.¹⁵

Further, the history of the employment incident is supported by the medical evidence of record. Specifically, Dr. Taft observed in his February 8, 2021 report that appellant complained about fever and chills with dyspnea following his fall when he slipped on slushy ice and landed on his right side at work on January 24, 2021. He further observed that appellant felt fine on the date of injury, but subsequently received medical treatment. Dr. Gierahn, in provider notes dated January 28, 2021, related that appellant presented to the emergency department with a chief complaint of pain in his left lateral rib area and reported a history that he slipped and fell on the ice several days ago. He discussed his examination findings and diagnosed bruised left rib, initial encounter. Mr. Wojtecki's March 25, 2021 letter related a history that on January 24, 2021 appellant slipped on a sidewalk and fell onto his right side. He attributed his diagnosed left-sided empyema to the January 24, 2021 incident. Likewise, Dr. Zagrodnik's March 23, 2021 note, Ms. Bruce's February 11, 2021 letter, and March 10, 2022 letter also attributed appellant's left empyema, hemopneumothorax, and hydropneumothorax to his fall on the ice at work on January 24, 2021 prior to his hospitalization on February 7, 2021. The injuries appellant claimed are consistent with the facts and circumstances he recounted, his course of action, and the medical evidence he submitted. The Board, therefore, finds that he has met his burden of proof to establish an employment incident in the performance of duty on January 24, 2021, as alleged.

As appellant has established that the January 24, 2021 employment incident occurred as alleged, the question becomes whether this incident caused a personal injury.¹⁶ Thus, the case must be remanded for consideration of the medical evidence with regard to the issue of causal

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *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).

relationship. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on January 24, 2021, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2022 merit decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 26, 2023
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