

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

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**C.B., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Greensboro, NC, Employer**

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**Docket No. 22-1353  
Issued: April 25, 2023**

*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 September 19, 2022 appellant filed a timely appeal from an April 14, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on January 29, 2022, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the issuance of OWCP's April 14, 2022 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." See 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 March 11, 2022 appellant, then a 58-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she sustained a right torn rotator cuff on January 29, 2022 while in the performance of duty. She explained that she was loading a heavy package and her hand slid off as she was lowering it, causing her arm to overextend and tear her rotator cuff. Appellant stopped work on February 22, 2022. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In a development letter dated March 14, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

On February 4, 2022 appellant was seen by Marsha Long, a nurse practitioner. Ms. Long related that appellant experienced a "crick" in her neck radiating down to her right upper arm. Appellant indicated that she had awoken this way and the pain had worsened during the week. She further indicated that she tried heat, ice, and topical arthritic medicines.

On February 7, 2022 appellant was seen by Dr. Jillian Irwin, a Board-certified internist. She related right shoulder pain starting January 30, 2022 that had increased over time. Dr. Irwin administered an injection in the trapezius muscle.

On February 17, 2022 appellant was seen by Dr. Irwin for a follow-up appointment. She related improvement after receiving injections on February 7, 2022, but she continued to have pain running down the edge of her right shoulder and possibly her shoulder joint. Appellant received a right subacromial bursa steroid injection. Dr. Irwin assessed shoulder pain.

On March 7, 2022 appellant was seen by Jesse Mayo, a nurse practitioner. Her right shoulder examination showed no swelling erythema ecchymosis and no focal tenderness; however, the clinical examination was highly suggestive of complete rotator cuff tear. In another March 7, 2022 note, Mr. Mayo related that appellant was unable to return to work until magnetic resonance imaging (MRI) scan results were reviewed. Appellant was seen again by Mr. Mayo in a follow-up appointment on March 14, 2022. Review of her MRI scan showed rotator cuff tearing and labral tearing. Appellant was instructed to remain off work.

An MRI scan report dated March 9, 2022 and signed by Dr. Greg Jones, a Board-certified radiation oncologist, related impressions of: (1) High riding humeral head with acromial (AC) joint spurring and grade 2 supraspinatus tear; (2) Grade 2 infraspinatus tear near the insertion; and (3) Superior labral type 2 tear, non-displaced.

On March 24, 2022 appellant was seen by Dr. Eric Clarke, a Board-certified orthopedic surgeon. Dr. Clarke reviewed x-ray reports of the right shoulder obtained on March 7, 2022 indicating AC joint arthrosis with normal humeral head elevation. Review of the MRI scan report indicated interstitial pathology of supraspinatus and infraspinatus with no complete full-thickness tear appreciated. Superior labral pathology and AC joint arthropathy were also noted.

In an undated letter, received on April 13, 2022, Dr. Clarke noted that appellant presented with right shoulder pain, after she lifted a box at work on January 29, 2022. He reported that his

examination of appellant on March 24, 2022 revealed limitation of motion, strength weakness, and positive impingement sign with tenderness over her AC joint. Dr. Clarke further noted impressions of AC joint arthrosis, probable superior labral tear, and AC joint arthropathy. He indicated that conservative management failed, and that appellant opted for surgical treatment.

By decision dated April 14, 2022, OWCP found that appellant had not established that the January 29, 2022 employment incident had occurred as alleged. It 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<sup>3</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, 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 an employee sustained a traumatic injury in the performance of duty, it must first be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident that allegedly occurred at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can generally be established only by medical evidence.<sup>6</sup>

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.<sup>7</sup> The employee has not met his or her burden of proof 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. 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

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<sup>3</sup> *Id.* at § 8101.

<sup>4</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>5</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 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> *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989); *see* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. §§ 10.5(ee), 10.5(q) (traumatic injury and occupational disease defined, respectively).

<sup>7</sup> *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

established.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on January 29, 2022, as alleged.

In her Form CA-1 dated March 11, 2022, appellant alleged that she sustained a right torn rotator cuff on January 29, 2022 in the performance of duty. She explained that she was loading a heavy package and her hand slid off the package as she was lowering it, causing her arm to overextend and tear her rotator cuff. Appellant's supervisor acknowledged on the reverse side of the claim form that appellant was injured in the performance of duty.

As noted, 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.<sup>10</sup> Appellant has consistently maintained that her injury occurred when she lifted a box, on January 29, 2022, and her right arm overextended when her hand slipped from the box. Dr. Clarke related this history of injury on January 29, 2022. Dr. Irwin related that appellant noted right shoulder pain as of January 30, 2022.

Therefore, the Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on January 29, 2022, as alleged.<sup>11</sup>

As appellant has established that an incident occurred in the performance of duty on January 29, 2022, as alleged, the question becomes whether the incident caused an injury.<sup>12</sup> OWCP found that she had not established the factual component of fact of injury. The case must, therefore, be remanded for consideration of the medical evidence of record regarding causal relationship. After any further development deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted January 29, 2022 employment incident.

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<sup>8</sup> *C.M.*, Docket No. 20-1519 (issued March 22, 2019); *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>9</sup> *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>10</sup> *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *see J.V.*, Docket No. 21-0029 (issued April 15, 2022); *C.B.*, Docket No. 21-0670 (issued January 27, 2022).

<sup>11</sup> *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

<sup>12</sup> *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

**CONCLUSION**

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on January 29, 2022, as alleged. The Board further finds that the case is not in posture for decision as to whether appellant has established a right shoulder condition causally related to the accepted employment incident.

**ORDER**

**IT IS HEREBY ORDERED THAT** the April 14, 2022 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 25, 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