

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

P.G., Appellant)	
)	
and)	Docket No. 23-0683
)	Issued: December 27, 2023
U.S. POSTAL SERVICE, SMITHSONIAN)	
INSTITUTION MAIL FACILITY,)	
Washington, DC, Employer)	
)	

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 April 14, 2023 appellant filed a timely appeal from a March 17, 2023 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.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on April 6, 2020, as alleged.

FACTUAL HISTORY

On January 27, 2023 appellant, then a 45-year-old bulk mail clerk, filed a traumatic injury claim (Form CA-1) alleging that on April 6, 2020 she injured her lower back and lumbar spine,

¹ 5 U.S.C. § 8101 *et seq.*

hips, and left Achilles tendon when she lifted heavy packages and tubs while in the performance of duty. On the reverse side of the claim form an employing establishment supervisor controverted the claim, noting that she never informed her about the injury, nor provided documentation of it. Appellant did not stop work.

In support of her claim, appellant submitted a May 18, 2021 report from Dr. Bryan Murtaugh, Board-certified in sports medicine, physical medicine, and rehabilitation. Dr. Murtaugh noted that she was hearing impaired, and required a sign language interpreter. He treated appellant for lower back pain with an onset of approximately six months prior. In a July 9, 2021 report, Dr. Murtaugh reviewed diagnostic imaging which noted an impression of degenerative changes of the lumbar spine, an L4-5 disc bulge with mass effect upon the left exit nerve root laterally, and an L5-S1 disc bulge abutting the S1 nerve roots bilaterally, right greater than left.

In a September 20, 2021 report, Dr. Murtaugh noted that he treated appellant with injections and, in a September 27, 2021 note, he advised that she could return to work without restrictions.

In October 29 and December 2, 2021 reports, Dr. Murtaugh assessed lumbar pain and lumbar facet pain, and treated appellant with injections. In reports dated February 11, May 6, and August 29, 2022, appellant reported that she did not recall specific exacerbating factors, but that her pain varied based on the activity, and that she wore a back brace at work for support.²

In a February 8, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted physical therapy notes dated June 5 through September 11, 2019, in which Dr. Emily Trosch and Dr. Megan Moran, physical therapists, treated her with therapeutic exercise and noted diagnoses of low back pain, bilateral hip stiffness, and muscle weakness. Dr. Trosch and Dr. Moran related that she reported experiencing back spasms, increased pain when lifting and carrying objects, and difficulty lifting heavier boxes at work. Appellant also reported that her back pain began in approximately February 2019 and her work duties included delivery and pick up, metering mail, and lifting packages over 30 pounds.

In physical therapy notes dated August 20, 2020 through February 12, 2021, Dr. Trosch, Dr. Jennifer Lowe, and Kimberly Agan, a physical therapist, treated appellant and noted diagnoses of low back pain and abnormal posture. On August 20, 2020 Dr. Lowe noted that she related that appellant's low back and hip symptoms had increased since the COVID-19 pandemic quarantine.

² In September 13, October 11, and November 1, 2022 reports, Dr. Nicholas Casscells, a Board-certified orthopedic surgeon, treated appellant for recurring left heel pain. If appellant is alleging that she sustained an occupational disease, she may wish to file a separate claim.

On August 20, 2021 appellant presented to Dr. Murtaugh for follow up and he assessed bilateral lumbar radiculopathy and recommended injections.

In a September 26, 2022 report, Dr. Casscells noted that appellant was unable to return to work at that time due to the nature of her injury. An October 11, 2022 x-ray report of appellant's left foot noted an impression of postsurgical changes and enthesopathy.

In physical therapy notes dated October 25, 2022 through February 9, 2023, Jared Miller and Kala Flagg, physical therapists, treated appellant and diagnosed pain in the left ankle and left foot joints, left ankle stiffness, and muscle weakness. They noted that she worked as a mail clerk with duties of prolonged standing, walking, and driving, and that she had been diagnosed with Haglund's deformity following the onset of her left Achilles symptoms.

In a February 16, 2023 response to OWCP's development questionnaire, appellant noted that she had been off work due to COVID-19, and was not scheduled to return until April 6, 2020, the alleged date of injury. She related that she had previously experienced muscle spasms in her back while at home, and underwent physical therapy for other conditions. Appellant indicated that she began work in April 2020, and had no issues until she began lifting heavy packages to the metering machine scale and experienced a burning sensation and muscle spasm. She noted that she returned to work after the sensation ceased and left work early, and that she experienced discomfort while walking and with certain motions.

By decision dated March 17, 2023, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events or incident occurred as alleged. Consequently, it found that she had not met the requirements 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 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

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).

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. The first component is that 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 an 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. The employee has not met his or her 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.⁸ 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.⁹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on April 6, 2020, as alleged.

In her Form CA-1, appellant indicated that on April 6, 2020 she injured her lower back and lumbar spine, hips, and left Achilles tendon when she lifted heavy packages and tubs while in the performance of duty. In a February 16, 2023 response to OWCP's development questionnaire, she noted that she experienced muscles spasms in her back while off from work during the COVID-19 pandemic, which worsened when she returned to work on April 6, 2020 due to lifting heavy packages onto the metering machine scale. Although an employing establishment supervisor noted on the reverse side of appellant's Form CA-1 that appellant never informed her about the injury, nor provided documentation of it, the employing establishment did not submit any further letters or other evidence controverting the factual allegations of appellant's claim in response to OWCP's claim development.

Appellant has consistently maintained that her injury occurred due to increased lifting activities when she returned to work on April 6, 2020 following a COVID-19 epidemic quarantine. Therefore, the Board finds that she has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on April 6, 2020 as alleged.

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

⁹ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

Consequently, the question becomes whether the incident caused an injury.¹⁰ As OWCP found that appellant had not established fact of injury, it did not evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.¹¹ After such further development as 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 April 6, 2020 employment incident.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on April 6, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the March 17, 2023 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: December 27, 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

¹⁰ *J.M.*, Docket No. 23-0293 (issued June 15, 2023); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹¹ *J.M.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016).