

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

M.C., Appellant)	
)	
and)	Docket No. 23-1031
)	Issued: December 29, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Milwaukee, WI, 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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On July 28, 2023 appellant filed a timely appeal from a June 20, 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.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on March 18, 2023, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the June 20, 2023 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. 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 April 6, 2023 appellant, then a 54-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 18, 2023 he sustained a left rotator cuff injury when reaching with a bag on his shoulder while in the performance of duty.³ On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty, but indicated by checkmark that their knowledge of the facts about the injury did not agree with appellant's statements. The supervisor further explained that appellant only stated that the alleged injury happened over a period of time and never verified that it happened at work. The form indicated that appellant stopped work on March 22, 2023.

A work status note dated March 20, 2023 with an illegible signature was received by OWCP and indicated that appellant was seen in an emergency department and was off work until March 23, 2023.

A work status note dated March 22, 2023 and signed by Dr. Jake D. Bauwens, an orthopedic surgery specialist, indicated a diagnosis of possible left rotator cuff tear. Dr. Bauwens placed appellant off work pending an MRI.

In a letter received on April 10, 2023, the employing establishment controverted appellant's claim for continuation of pay, contending that there was no proven causal relationship between his assigned duties and the alleged injury. It further contended that appellant's supervisor noted on the CA-1 form that appellant stated the injury happened over a period of time and never verified it happened at work.

On April 10, 2023 the employing establishment issued Part A of an authorization for examination and/or treatment (Form CA-16).

In a development letter dated April 17, 2023, OWCP advised appellant of the deficiencies in his claim. It indicated that the evidence provided was insufficient to establish that appellant actually experienced the employment factors alleged to have caused injury. It also noted that there was no diagnosis of any condition, nor a physician's opinion as to how the alleged injury resulted in a medical condition. A questionnaire was provided to appellant to substantiate the factual elements of his claim. OWCP afforded appellant 60 days to respond. No response was received.

A duty status report (Form CA-17) dated April 10, 2023 and signed by Dr. Bauwens indicated a diagnosis of partial left rotator cuff tear and placed appellant on restricted duty.

In a subsequent development letter dated May 18, 2023, OWCP indicated that it performed an interim review of appellant's case file and found that the evidence remained insufficient to support his claim. It further reminded appellant that he was afforded 60 days from the April 17, 2023 development letter to respond.

³ Appellant has a previously filed traumatic injury claim under OWCP File No. xxxxxx035 for an alleged July 29, 2015 left shoulder strain.

On March 22, 2023 appellant was seen by Dr. Bauwens for severe pain in his left shoulder. He noted that on Monday of this week he was carrying an approximately 50-pound bag and doing repetitive motions with his left and right arm at work and developed pain in left shoulder. Appellant was seen at an urgent care, but his pain had not improved since then. Physical examination indicated significant pain and weakness with rotator cuff testing. It also indicated previous surgical incisions. Dr. Bauwens diagnosed suspected left shoulder traumatic tear of the rotator cuff and ordered an MRI.

An MRI report of the left shoulder dated April 6, 2023 and signed by Dr. Deidre Rippl, a Board-certified diagnostic radiologist, demonstrated: (1) attenuated insertional supraspinatus compatible partial-thickness undersurface tearing, approximately 50 percent; (2) superior and posterior labral tears; and (3) subacromial subdeltoid bursitis.

On April 10, 2023 appellant was seen by Dr. Bauwens for a follow up on his left shoulder injury. He related some improvement, and he was now able to “fully range” his shoulder. Physical examination showed improvement. Dr. Bauwens diagnosed 50 percent articular-sided supraspinatus tear of the left shoulder and noted that this was a workplace injury. He also referred appellant to physical therapy and kept him on restricted duty.

On April 12, 2023 appellant was seen by Leann Harman, a physical therapist. He related that on March 18, 2023 he was reaching for a box of mail at work and experienced a sharp and stabbing pain to the anterior shoulder. Appellant continued to work for the next two days and by the following Monday he was unable to “raise the shoulder into flexion.” He further related he underwent a radiograph and an MRI which was conclusive for a tear within the rotator cuff.

An attending physician’s report (Form CA-20) dated May 19, 2023 by Dr. Bauwens reiterated appellant’s diagnosis of 50 percent articular-sided supraspinatus tear of the left shoulder. Dr. Bauwens checked a box marked “Yes” to the question of whether he believed appellant’s condition was caused or aggravated by an employment activity, and he checked a box marked “No” to the question of whether there was history or evidence of concurrent or preexisting injury, disease, or physical impairment. Appellant was kept on restricted duty.

Appellant was seen again by Dr. Bauwens on May 24, 2023, he reiterated his opinion that appellant had a left shoulder 50 percent partial tear of the rotator cuff, which was a workplace injury.

By decision dated June 20, 2023, OWCP denied appellant’s traumatic injury claim, finding that the evidence of record was insufficient to establish the occurrence of the alleged March 18, 2023 employment incident. 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 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

⁴ *Id.*

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.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 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 be established only by medical evidence.⁷

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.⁸ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon 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 serious doubt on an employee's statements in determining whether a *prima facie* case has been established.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident on March 18, 2023, 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

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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).

⁷ *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).

⁸ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

⁹ *D.M.*, Docket No. 23-180 (issued August 25, 2023); *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹⁰ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

persuasive evidence.¹¹ Appellant alleged in his April 6, 2023 Form CA-1 that on March 18, 2023 he sustained a left rotator cuff injury while reaching with a bag on his shoulder, and that he continued to work until March 22, 2023. He sought medical care on March 22, 2023 with Dr. Bauwens who noted appellant's history that on Monday of that week appellant experienced left shoulder pain while carrying a bag on his shoulder and performing repetitive activity with his upper extremity. Dr. Bauwens diagnosed a partial left shoulder rotator cuff tear. On April 12, 2023 appellant was seen by Leann Harman, a physical therapist. Ms. Harman noted a history of injury that on March 18, 2023 appellant was reaching for a box of mail at work and experienced a sharp and stabbing pain to the anterior shoulder. Appellant continued to work for the next two days and by the following Monday he was unable to "raise the shoulder into flexion."¹² The injury he claimed is consistent with the facts and circumstances he set forth, his subsequent course of action, and the medical evidence he submitted. The Board thus finds that appellant has met his burden of proof to establish the employment incident occurred in the performance of duty on March 18, 2023 as alleged.

As appellant has established that March 18, 2023 incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹³ As OWCP found that he had not established fact of injury, it has not fully evaluated the medical evidence. The case must therefore be remanded for consideration of the medical evidence of record.¹⁴ After this, and other such further development as deemed necessary, OWCP shall issue a de novo decision regarding causal relationship.¹⁵

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an employment incident in the performance of duty on March 18, 2022, as alleged. The Board further finds that the case is not in posture for decision regarding whether the medical evidence of is sufficient to establish an injury causally related to the accepted March 18, 2022 employment incident.

¹¹ *See id.*

¹² While a physical therapist is not a physician, evidence from medical providers who are not physicians can be considered in evaluating whether appellant has provided a consistent history of injury. *See C.W.*, Docket No. 18-0754 (issued October 2, 2019).

¹³ *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).

¹⁴ *M.H., id.; S.M.*, Docket No. 16-0875 (issued December 12, 2017).

¹⁵ The Board notes that the employing establishment executed a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the June 20, 2023 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded for further proceedings consistent with this decision of the Board.¹⁶

Issued: December 29, 2023
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

¹⁶ On remand OWCP should consider administratively combining OWCP File No. xxxxxx035 with the current claim.