

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on March 15, 2021, as alleged.

FACTUAL HISTORY

On April 5, 2021 appellant, then a 57-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on March 15, 2021 he injured his right knee when he pulled a muscle when getting into a mail truck while in the performance of duty. He reported that the pain persisted that night and in the following days, but he continued working. By March 22, 2021, the pain had worsened and appellant told his supervisor that he needed to see a physician. On the reverse side of the claim form, his manager, M.S., acknowledged that appellant was injured in the performance of duty. However, she challenged the factual basis of his claim, asserting that, when he reported his injury, he told her that he was calling in about his knee, but he told his supervisor that his eyes were irritated. Appellant stopped work on April 8, 2021.

In an April 12, 2021 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a March 24, 2021 report, Dr. Ronnie Shade, a Board-certified orthopedic surgeon, related that appellant sustained a traumatic work injury on March 15, 2021. He reported that appellant was getting into the postal vehicle while performing his regular employment duties and pulled a muscle in his right knee, followed by throbbing pain, sharp spasms, and weakness in that knee. Appellant reported that his knee pain worsened that night and reported the injury to his supervisor the next day. Dr. Shade related appellant's ongoing symptoms, including throbbing pain, swelling, stiffness, and a sensation of giving way in the knee, and noted that appellant was unable to carry out his work duties. His examination of the right knee revealed medial joint line tenderness, effusion, and bilateral pretibial edema to the lower extremities. An x-ray scan of the right knee taken on March 24, 2021 revealed squaring of the condyle with a small lateral femoral condyle osteophyte. Dr. Shade diagnosed sprain, medial meniscus tear, and tendinitis of the right knee, which was treated with an injection of pain and corticosteroid medication to the right knee. He opined that the mechanism of injury was directly causally related to the claimed March 15, 2021 employment incident. A nearly identical report of even date added that appellant should be off work from March 24 through April 7, 2021. In a work restriction note of even date, Dr. Shade related that appellant was totally incapacitated due to pain, swelling, stiffness, and weakness in the right knee, which caused difficulty with prolonged walking, standing, sitting, and driving. He held appellant off work from March 24 through April 7, 2021.

In April 7 and 22, 2021 reports, Dr. Shade related appellant's symptoms and noted that appellant was still unable to carry out his work duties. He continued to diagnose sprain, medial meniscus tear, and tendinitis of the right knee. In the April 7, 2021 report, Dr. Shade advised that appellant should remain off work from April 8 through 22, 2021, and in the April 22, 2021 report, he extended that restriction through May 7, 2021. In work restriction notes dated April 7 and 22, 2021, he indicated that appellant was disabled from work from April 8 through May 7, 2021.

By decision dated May 17, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the March 15, 2021 incident occurred as alleged. It noted that he had not submitted a completed factual development questionnaire. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

OWCP subsequently received a March 24, 2021 duty status report (Form CA-17) signed by Dr. Shade, relating that appellant pulled a muscle in his right knee and diagnosing a sprain, effusion, and medial meniscus tear of the right knee. Dr. Shade recommended that appellant be off work from March 24 through April 7, 2021.

On May 25, 2021 appellant requested review of the written record by a representative of OWCP's Branch of Hearings and Review. In support of his request, appellant submitted an attending physician's report (Form CA-20) dated March 23, 2021 bearing his own signature. He also submitted a Form CA-1 of even date alleging that on March 15, 2021 he sustained a sprain to his lower right leg when getting into a mail truck and pulling a muscle while in the performance of duty. On the reverse side of the claim form, a supervisor, G.M., indicated that the employing establishment received notice of an injury on March 23, 2021. G.M. acknowledged that appellant was injured in the performance of duty and agreed with appellant's statement of facts.

OWCP subsequently received a July 23, 2021 report, wherein Dr. Shade diagnosed sprain, medial meniscus tear, tendinitis, and primary osteoarthritis of the right knee. Dr. Shade indicated that appellant had been off work continuously since March 24, 2021 and advised that appellant should remain off work from July 24 through August 13, 2021. In a work restriction note of even date, he held appellant off work from July 24 through August 13, 2021.

By decision dated August 27, 2021, OWCP's hearing representative affirmed the May 17, 2021 decision.

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

³ *Id.*

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); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

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 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 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.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on March 15, 2021 as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time, place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹³ Appellant alleged in his April 5, 2021 Form CA-1 that he sustained an injury to his right knee on March 15, 2021 when he pulled a muscle in his leg while getting out of a mail truck. A Form CA-1, signed by a supervisor, G.M., on March 23, 2021 contained a

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); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

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

¹¹ *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

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

¹³ *See id.*

substantially identical account of the claimed March 15, 2021 employment incident. The employing establishment acknowledged that appellant was injured in the performance of duty, and concurred with his account of the incident. Additionally, appellant sought medical care on March 24, 2021 with Dr. Shade who noted appellant's history of injury on March 15, 2021 diagnosed a sprain, medial meniscus tear, and tendinitis of the right knee, and treated appellant with an injection of pain and corticosteroid medication to the knee. The injuries appellant claimed are 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 he has met his burden of proof to establish the employment incident occurred in the performance of duty on March 15, 2021, as alleged.

As appellant has established that the March 15, 2021 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁴ As OWCP found that he had not established fact of injury, it has not evaluated the medical evidence. The case must therefore be remanded for consideration of the medical evidence of record.¹⁵ After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision regarding causal relationship.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish an employment incident in the performance of duty on March 15, 2021, as alleged. The Board further finds that the case is not in posture for decision regarding whether the medical evidence is sufficient to establish an injury causally related to the accepted March 15, 2021 employment incident.

¹⁴ 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).

¹⁵ *M.H.*, *id.*; *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 7, 2023
Washington, DC

Patricia H. Fitzgerald, Deputy 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