

<sup>2</sup> The Board notes that, following the September 30, 2021 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 August 24, 2021 appellant, then a 55-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on July 5, 2021 she sustained a left upper thigh and leg injury as a result of pulling all-purpose containers (APC) and bulk mail containers (BMC) while in the performance of duty. On the reverse side of the claim form, the employing establishment contended that she was not in the performance of duty when her injury occurred. Appellant did not stop work.

In a letter of controversion dated August 24, 2021, the employing establishment challenged appellant's claim asserting that she was not at work on the date and time of the alleged incident due to the federal holiday. It further informed OWCP that appellant had not provided an employee statement or submitted medical documentation to substantiate her claim.

In a development letter dated August 26, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a September 7, 2021 attending physician's report (Form CA-20), Dr. Mitchell Klement, a Board-certified orthopedic surgeon, noted that appellant was first examined on July 14, 2021 for a left groin strain as a result of pushing "rolling stock" and BMCs on July 5, 2021. He diagnosed a left groin muscle strain and left hip arthritis. Dr. Klement noted that she had left hip arthritic changes that would have predated the injury to her groin. However, he opined that the groin muscle strain caused by pulling a heavy cart on July 5, 2021 aggravated appellant's underlying arthritic changes in the left hip and checked a box marked "Yes" indicating that her condition was caused or aggravated by her employment activities.

By decision dated September 30, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that a traumatic injury occurred in the performance of duty on July 5, 2021, 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 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,<sup>4</sup> 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

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued December 13, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

employment injury.<sup>5</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>6</sup>

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. 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.<sup>7</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. 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.<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 not met her burden of proof to establish a traumatic injury in the performance of duty on July 5, 2021, as alleged.

In a development letter dated August 26, 2021, OWCP provided a factual questionnaire for her completion and requested that she submit clarifying information describing how her claimed injury occurred. Appellant, however, has not submitted a completed development questionnaire or otherwise provided a statement further describing the specific alleged employment-related incident.<sup>10</sup> As she has not responded to the request for factual information, the record lacks sufficient factual evidence to establish specific details of how the claimed injury occurred.<sup>11</sup>

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<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

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

<sup>10</sup> *S.Z.*, Docket No. 19-1125 (issued October 22, 2020); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

<sup>11</sup> *M.L.*, Docket No. 19-0909 (issued September 17, 2019); *M.S.*, Docket No. 18-0059 (issued June 12, 2019).

Absent a response from appellant addressing the employing establishment's contentions or the circumstances surrounding her alleged injury, the Board finds that she has not established that a traumatic injury occurred in the performance of duty on July 5, 2021, as alleged.<sup>12</sup>

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden to establish a traumatic injury in the performance of duty on July 5, 2021, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the September 30, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 15, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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<sup>12</sup> See *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).