United States Department of Labor
Employees' Compensation Appeals Board

E.P., Appellant	)	
and	)	**Docket No. 21-0899**
	)	**Issued: January 25, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Oakland, CA, 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 May 5, 2021 appellant filed a timely appeal from a March 31, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 her burden of proof to establish employment factors, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the March 31, 2021 decision, appellant submitted additional evidence to OWCP. 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 January 28, 2021 appellant, then a 62-year-old city carrier, filed an occupational disease claim (Form CA-2) alleging injury due to performing her job, which involved the collection and delivery of postal materials. She asserted that, after 30 years of service, her job duties of walking, climbing stairs, getting in and out of her postal vehicle, and carrying heavy packages caused injury to her right knee. Appellant indicated that she first became aware of her claimed condition and its relation to her federal employment on December 14, 2020. On the reverse side of the form appellant's immediate supervisor advised that appellant reported the claimed condition to her on January 14, 2020. In an accompanying statement, appellant indicated that she initially thought the pain from her claimed condition would go away with time, but it persisted to the point she could barely walk on her right leg, and then sought medical treatment.

Appellant submitted a January 14, 2021 work status report from Dr. Glenn A. Cooperman, a Board-certified occupational medicine specialist, who diagnosed overuse injury and right medial knee pain. Dr. Cooperman placed appellant on modified-duty work with work restrictions, including no repetitive squatting, prolonged/repetitive kneeling, walking on uneven ground, heavy or repetitive pushing/pulling, climbing, or prolonged standing/walking.

In a development letter dated February 1, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim, and provided a questionnaire for her completion. In a separate development letter of even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor on the accuracy of the statements appellant made regarding her claim. It afforded both parties 30 days to respond.

In response, appellant submitted a January 22, 2021 work status report from Dr. David P. Reyes, a Board-certified emergency medicine specialist, who diagnosed right medial knee pain.[3] Dr. Reyes recommended modified-duty work with the same work restrictions as outlined in Dr. Cooperman's January 14, 2021 work status report. In February 8, 18, and March 25, 2021 work status reports, Dr. Cooperman diagnosed overuse injury and right medial knee pain and continued to recommend modified-duty work. In a March 11, 2021 work status report, Dr. Reyes diagnosed right knee pain and continued to recommend modified-duty work.

In a March 9, 2021 letter, a health and resource management specialist for the employing establishment responded to OWCP's February 1, 2021 request for additional information. In response to OWCP's question regarding whether the employing establishment concurred with appellant's allegations, the specialist noted, "[t]here was no communication or medicals from the employee prior to [December 14, 2020]." She noted that appellant worked as a city carrier for eight hours per day, five days per week. The management specialist asserted that appellant did not actually carry heavy packages, although she did acknowledge that she moved heavy packages by using a hand truck to transport them from her postal vehicle to customers' front doors. She indicated that the duration of appellant's lifting duties was approximately 30 minutes on an

[3] OWCP also received a number of administrative documents regarding the management of occupational disease claims and employee rights under the Family and Medical Leave Act. No completed questionnaire was received from appellant.

intermittent basis. The specialist advised that appellant was required to bend and stoop on occasions when packages were placed on her workstation floor, and that she had to lift them off the floor and place them into her postal vehicle for delivery. An official job description for the city carrier position was attached, which indicated that the job requires collecting mail, and delivering it on foot or by postal vehicle. The description further indicates that a city carrier is required to carry mail weighing up to 35 pounds in shoulder satchels or other equipment and to load/unload containers of mail weighing up to 70 pounds.

By decision dated March 31, 2021, OWCP denied appellant's occupational disease claim, finding that the evidence of record was insufficient to establish that the claimed employment events occurred as she described. 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[4] 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,[5] 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.[6] 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.[7]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.[8]

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

[4] *Supra* note 1.

[5] *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).

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *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).

[8] *R.G.*, Docket No. 19-0233 (issued July 16, 2019). *See also Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

action.[9] The employee has not met his or her burden of proof in 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.[10] 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. An employee's statements alleging that an injury occurred at a given time and in a given manner are of great probative value and will stand unless refuted by strong or persuasive evidence.[11]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish employment factors, as alleged.

In the present case, appellant alleged injury due to performing her city carrier job, which involved the collection and delivery of postal materials. She asserted that, after 30 years of service, her job duties of walking, climbing stairs, getting in and out of her postal vehicle, and carrying heavy packages caused injury to her right knee. In its response to a February 1, 2021 development letter, the employing establishment acknowledged that appellant performed the essential duties of a city carrier as referenced in the Form CA-2, such as collecting, handling, and delivering mail. Although the employing establishment asserted that appellant did not actually carry heavy packages, it did acknowledge that she used a hand truck to transport them from her postal vehicle to customers' front doors. The evidence of record reflects that appellant indicated she first became aware of her claimed condition on December 14, 2020 and appellant's immediate supervisor advised that appellant reported the condition to her on January 14, 2021. Medical evidence in the case record demonstrates that appellant first sought medical care for her right knee condition on January 14, 2021. The Board notes, however, that appellant explained her delay in reporting the condition and seeking medical care. She indicated that she initially thought the pain from her right knee condition would go away with time, but that the pain persisted, and she then decided to visit a doctor.

For these reasons, the injury claimed by appellant and the implicated employment factors are consistent with the facts and circumstances she set forth, the statements from the employing establishment, and her course of action. As noted above, a claimed 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.[12] An employee's statements alleging that an injury occurred at a given time and in a given manner are of great probative value,

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

[10] *See V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

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

[12] *Id*.

and will stand unless refuted by strong or persuasive evidence.[13] Appellant was consistent in reporting her claimed condition and its presumed causes, and there are no such inconsistencies in the evidence as to cast serious doubt upon the validity of her claim.[14] The case record does not contain strong or persuasive evidence refuting appellant's account of her claimed injury. The Board thus finds that appellant has met her burden of proof to establish employment factors as alleged, including collecting, handling, and delivering mail.

As appellant has established that the employment factors factually occurred as alleged, the question becomes whether the employment factors caused an injury.[15] As OWCP denied appellant's claim on the basis that she had not established an employment factor, the case will be remanded for OWCP to evaluate the medical evidence of record and determine whether appellant sustained an injury casually related to the accepted employment factors. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish employment factors, as alleged. The Board further finds that the case is not in posture for decision regarding whether she sustained an injury causally related to the accepted employment factors.

[13] *See id.*

[14] *See supra* note 10.

[15] *See M.S.*, Docket No. 21-0600 (issued August 31, 2021); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

ORDER

IT IS HEREBY ORDERED THAT the March 31, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: January 25, 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