

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

C.F., Appellant)

and)

U.S. POSTAL SERVICE, TALLAHASSEE)
PROCESSING & DISTRIBUTION CENTER,)
Tallahassee, FL, Employer)
-----)

**Docket No. 23-0290
Issued: July 12, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On December 25, 2022 appellant filed a timely appeal from a November 28, 2022 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 September 2, 2022, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the November 28, 2022 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 October 7, 2022 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2022 he jarred his lower back when driving a forklift over cracks and bumps in the employing establishment parking lot while in the performance of duty. He stopped work on September 2, 2022. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty, but noted that he had not received any statements from appellant, except that he stated that he had a previous injury in 2014.

OWCP received an October 2, 2022 authorization for examination and/or treatment (Form CA-16) executed by the employing establishment for treatment of appellant's back pain. The date of injury was listed as September 2, 2022. In an attending physician's report, Part B of a Form CA-16, dated October 14, 2022, Dr. Dan Tehle Peters, Board-certified in family medicine, related that appellant "injured right lower back last month picking up cardboard and driving a forklift." Dr. Peters noted that appellant had a 2012 right lower back injury which was still occasionally bothering him. He diagnosed right lower back strain and radiculopathy. Dr. Peters checked a box marked "Yes" indicating that the condition was caused or aggravated by the described employment activity.

In a report dated October 14, 2022, Dr. Peters related that appellant was seen for back pain which began on September 2, 2022 when he was driving a forklift. He recounted that six weeks' prior appellant injured his back while picking up cardboard and driving a forklift. Dr. Peters also related that appellant had a prior lower back injury in 2012, which continued to cause intermittent issues and occasionally miss work for a few days. He conducted an examination and diagnosed lower back muscle, fascia, and tendon strain and lumbar radiculopathy.

In an October 19, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP noted that it accepted a lumbar sprain due to appellant's March 12, 2012 traumatic injury under OWCP File No. xxxxxx148, noting that he had not received any medical treatment for this condition since 2012. It afforded him 30 days to provide the necessary evidence.

OWCP subsequently received reports of a September 15, 2022 computerized tomography (CT) scan and September 23, 2022 magnetic resonance imaging (MRI) scan. The September 15, 2022 lumbar CT scan indicated right L5-S1 disc protrusion and L5-S1 posterior facet degenerative change and hypertrophy. The September 23, 2022 MRI scan demonstrated L4-5 giant central right paracentral superiorly migrated extruded disc herniation impinging on the right L4 nerve root, L5-S1 shallow right disc protrusion impinging on the right S1 nerve root, L3-4 disc bulge impinging on the right L3 nerve root, and multilevel lumbar degenerative facet arthrosis.

OWCP also received work status notes dated October 14 and November 4, 2022 from Dr. Peters, which noted diagnoses of lower back muscle, fascia, and tendon strain and lumbar radiculopathy and provided work restrictions.

A duty status report (Form CA-17) dated November 4, 2022 from Dr. Peters noted an injury date of September 2, 2022 and diagnoses of lower back strain and radiculopathy, which he

attributed to the September 2, 2022 incident. He held appellant off work until seen by a neurosurgeon.

In a note dated November 28, 2022, Dr. Patricia Hogan, a physician specializing in family medicine, diagnosed lower lumbar strain and noted dates that treatment was provided.

By decision dated November 28, 2022, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment incident occurred, as alleged. It, therefore, concluded that the requirements had not been met 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

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁷ 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. Second, the employee must submit sufficient evidence, to establish that the employment incident caused a personal injury.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 action.⁹ The employee has not met his or her burden of proof in establishing the occurrence of an

³ *Supra* note 1.

⁴ *C.M.*, Docket No. 22-0509 (issued September 28, 2022); *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *C.M., id.*; *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *C.M., id.*; *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).

⁷ *G.H.*, Docket No. 22-0876 (issued December 2, 2022); *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁸ *C.M., supra* note 4; *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354.

⁹ *See C.M., id.*; *J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹⁰ Such circumstances such 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 statement in determining whether a *prima facie* case has been established.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident occurred in the performance of duty on September 2, 2022, as alleged.

In his October 7, 2022 Form CA-1, appellant described that on September 2, 2022 he jarred his back while driving a forklift over cracks and bumps in the employing establishment parking lot. The employing establishment issued a Form CA-16 on October 2, 2022 authorizing treatment for the alleged September 2, 2022 incident. In addition, on October 4, 2022, Dr. Peters on Part B of the Form CA-16 and in his report dated October 14, 2022 described the injury as occurring while appellant was picking up cardboard and driving a forklift. Although OWCP found that appellant had submitted inconsistent descriptions regarding how the incident occurred, the Board finds that appellant's further detail that he was picking up cardboard driving the forklift is not inconsistent with his initial statement that he sustained his back injury while driving a forklift over cracks and bumps in the employing establishment parking lot.

As noted, 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.¹³ Appellant has consistently maintained that his injury occurred on September 2, 2022 when he was driving a forklift over cracks and bumps in the employing establishment parking lot. Therefore, the Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on September 2, 2022 as alleged.¹⁴

As appellant has established that an incident occurred in the performance of duty on September 2, 2022 as alleged, the question becomes whether the incident caused an injury.¹⁵ As OWCP found that he 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.¹⁶ After

¹⁰ *C.M., id.*; *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

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

¹² *See G.H., supra* note 7; *J.B.*, Docket No. 19-1487 (issued January 14, 2020); *W.C.*, Docket No. 18-1651 (issued March 7, 2019).

¹³ *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹⁴ *See J.V.*, Docket No. 21-0029 (issued April 15, 2022); *C.B.*, Docket No. 21-0670 (issued January 27, 2022).

¹⁵ *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁶ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

any further development deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted employment incident.¹⁷

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on September 2, 2022, as alleged.¹⁸

ORDER

IT IS HEREBY ORDERED THAT the November 28, 2022 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: July 12, 2023
Washington, DC

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

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

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁷ The Board notes that OWCP's procedures provide that cases should be administratively combined where a new injury case is reported for an employee who previously filed an injury claim for the same part of the body and where correct adjudication depends on cross-referencing between files. *See* Federal (FECA) Procedure Manual, Part 2 – Claims, *File Maintenance and Management*, Chapter 2.400.8c(1) (February 2000); *V.G.*, Docket No. 19-0670 (issued April 30, 2020). On remand OWCP shall administratively combine File Nos. No. xxxxxx148 and xxxxxx542.

¹⁸ The Board notes that the employing establishment issued 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. The Board notes however that the Form CA-16 issued in this case was incomplete as it did not authorize medical treatment by a specific provider. *See* 20 C.F.R. § 10.300(c); *R.C.*, Docket No. 22-1099 (issued December 28, 2022); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).