United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 23-0208**
	)	**Issued: June 26, 2023**
U.S. POSTAL SERVICE, CINCINNATI POST OFFICE, Cincinnati, OH, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On November 30, 2022 appellant filed a timely appeal from an October 7, 2022 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 a traumatic injury in the performance of duty on August 24, 2022, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the issuance of OWCP's October 7, 2022 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Boards 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 29, 2022 appellant, then a 31-year-old mail handler assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 24, 2022 her right knee popped when she was pushing a full bulk mail container (BMC) while in the performance of duty. She indicated that she was "fine" walking on her knee until the next day. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty, but marked a response "Yes" to the question of whether the injury was caused by willful misconduct, intoxication, or intent to injure self or another. Her supervisor noted that appellant failed to request assistance to push the heavy equipment in order to prevent injury. Appellant's supervisor also noted that appellant had related that her knee pain began at home. The form indicated that appellant stopped work on August 24, 2022.

A duty status report (Form CA-17) with an illegible signature dated August 25, 2022 indicated a diagnosis of patellar tendinitis. Appellant was advised to return to work.

Appellant submitted a narrative statement dated August 27, 2022 in which she reiterated her history of injury. She related that on August 24, 2022 around 10:00 p.m. she pushed a full BMC, which was a little hard to push, when she turned the BMC her right knee popped. Appellant further related that she finished the rest of her shift which ended at midnight. The next morning as she attempted to get out of bed, she almost collapsed as her knee hurt and was swollen. Appellant went to Urgent Care where she was told to keep her knee "wrapped up" and was instructed to obtain an x-ray.

In a development letter dated September 1, 2022, OWCP indicated that the evidence provided was insufficient to establish that appellant actually experienced the employment incident alleged to have caused her 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 her claim. The questionnaire noted that the employing establishment related that she had indicated that her pain began at home. It asked appellant to explain when her pain began. OWCP afforded her 30 days to respond.

In a report dated September 13, 2022, Jessica Boetcher, a physician assistant, noted that appellant was seen that day. Appellant related that she twisted her right knee on August 24, 2022 while moving a 500-pound mail cart. She further related intermittent swelling, as well as pain below the knee which had moved posteriorly and to the medial knee. Appellant also indicated that she had not yet returned to work. Ms. Boetcher diagnosed right knee sprain and released appellant to return to work that day with restrictions. A referral to orthopedics from Ms. Boetcher of even date included diagnoses of dysuria and right knee patellar tendinitis. A work status note, also of even date, allowed appellant to return to work with restrictions until September 20, 2022.

Appellant submitted a form for the state workers' compensation dated September 13, 2022 and signed by Ms. Boetcher. Ms. Boetcher indicated appellant's diagnosis of right knee sprain after a "twisting injury" from pushing a mail cart at work.

By decision dated October 7, 2022, OWCP found that appellant had not established that the August 24, 2022 incident occurred as alleged, because she had not responded to OWCP's

questionnaire. It also noted that the evidence of record was insufficient to establish a diagnosed medical condition in connection with the accepted employment incident. OWCP 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[3] 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, 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.[4] 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.[5]

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, place, and in the manner alleged. The second component is whether the employment incident caused a personal injury.[6]

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.[7] The employee has not met his or her burden of proof 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. 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.[8] An employee's statement alleging that an injury occurred at a given time and in a

[3] *Supra* note 1.

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

[5] *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).

[6] *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).

[7] *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

[8] *C.M.*, Docket No. 20-1519 (issued March 22, 2019); *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[9]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on August 24, 2022, as alleged.

In her August 29, 2022 Form CA-1, appellant alleged that on August 24, 2022 her right knee popped while she was pushing a full bulk BMC in the performance of duty. She also submitted a narrative statement dated August 27, 2022 in which she further explained that on August 24, 2022 around 10:00 p.m. she pushed a full BMC, which was a little hard to push, when she turned the BMC her right knee popped. Appellant further related that she finished the rest of her shift which ended at midnight. The next morning as she attempted to get out of bed, she almost collapsed as her knee hurt and was swollen. Appellant then sought medical treatment at an Urgent Care facility. A Form CA-17 dated August 25, 2022 reflects that she was seen on August 25, 2022 for right knee complaints. Appellant also consistently related the history of the August 24, 2022 incident to her subsequent medical providers.

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.[10] Appellant has consistently maintained that her injury occurred when her right knee popped as she pushed a full BMC on August 24, 2022. Furthermore, she sought medical treatment the next day, the history of injury contained in the reports was consistent, and her supervisor acknowledged that she was injured in the performance of duty. Therefore, the Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on August 24, 2022 as alleged.[11]

As appellant has established that, an incident occurred in the performance of duty on August 24, 2022, as alleged, the question becomes whether the incident caused an injury.[12] The case must, therefore, be remanded for consideration of the medical evidence of record.[13] After this and other such development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted August 24, 2022 employment incident.

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

[10] *Id*.

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

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

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

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on August 24, 2022, as alleged. The Board further finds that this case is not in posture for decision regarding whether she established an injury causally related to the accepted August 24, 2022 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the October 7, 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: June 26, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
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