United States Department of Labor
Employees' Compensation Appeals Board

S.L., Appellant	)	
and	)	**Docket No. 22-0440**
	)	**Issued: March 17, 2023**
U.S. POSTAL SERVICE, LIVERMORE ANNEX, Livermore, CA, Employer	)	

Appearances:
Tami Seastrand, for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On January 31, 2022 appellant, through her representatives, filed a timely appeal from a December 14, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on December 3, 2019, as alleged.

FACTUAL HISTORY

On December 4, 2019 appellant, then a 58-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 3, 2019 she sustained an injury to the lower part of the area where her hernia meshes were located while in the performance of duty. She explained that she was lifting a large, heavy pantry parcel to deliver to a specific address when she felt a sudden painful, sharp pinch on the left and right side of her hernia meshes. On the reverse side of the claim form, a human resources management specialist, S.G., acknowledged that appellant was injured in the performance of duty. However, she challenged the factual basis of appellant's claim. S.G. indicated that appellant did not stop work.

The employing establishment also submitted an additional reverse side of a Form CA-1 dated December 3, 2019, in which appellant's supervisor, F.N. indicated that the injury was caused because "[appellant] did n[o]t get her time requested then acted lifting anyway." F.N. also challenged the claim on the basis that appellant knew that the package was too heavy when she loaded it on the vehicle. He indicated that she stopped work on December 4, 2019.

In a December 3, 2019 statement, M.N., an employing establishment official, indicated that appellant requested a Form CA-1, occupational disease claim (Form CA-2), and an authorization for examination and/or treatment (Form CA-16) at approximately 3:25 p.m. on December 3, 2019. She also detailed a conversation with appellant about appellant's hours that day.

An undated and unsigned employing establishment injury investigation worksheet indicated that at 3:00 p.m. on December 3, 2019 appellant sustained sharp pain on the lower left and right side of a hernia while delivering a parcel. It noted that she reported lifting a heavy parcel at the time. The author asserted that the root cause of the incident was that appellant did not pay attention to or test the weight of the parcel and indicated that an "unsafe personal factor" and "unsafe practice" contributed to the incident. Appellant notified the employing establishment at the time of the injury and left work to seek medical attention that day.

Emergency department notes dated December 3, 2019 from Dr. Alan Huang, a Board-certified emergency medicine physician, related that appellant was a postal worker with a history of bilateral inguinal hernia repair with mesh. Appellant reported that she was delivering a package weighing over 40 pounds when she felt significant pain in her groin, greater on the left side. Dr. Huang's physical examination revealed tenderness in the lower abdominal wall and groin with slight swelling in the groin bilaterally. He reviewed a computerized tomography scan of the abdomen and pelvis taken that day and noted that it showed no evidence of hernia recurrence or abnormality. Dr. Huang diagnosed abdominal muscle strain and groin strain and advised that appellant should be off work for two days pending reevaluation.

In a December 16, 2019 statement, S.G. challenged appellant's claim. She enclosed a copy of M.N.'s December 3, 2019 statement, as well as an undated statement from S.M., the postmaster,

who stated that the only parcel for the address indicated on the Form CA-1 was a small package weighing eight ounces and included an image of a small package bearing that same address. S.M. further explained that all large parcels were delivered between 6:00 a.m. and 10:30 a.m.

An undated work excuse note, received by OWCP on December 16, 2019 from Dr. Michael Halperin, a Board-certified anesthesiologist, indicated that appellant was disabled from work from December 3, 2019 through January 15, 2020 due to work-related injuries sustained on December 3, 2019.

In a January 15, 2021 development letter, 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 respond.

OWCP subsequently received a December 9, 2019 narrative medical report from Dr. Halperin describing appellant's long history of work for the employing establishment and relating that, on December 3, 2019 at 3:00 p.m., appellant parked her long life vehicle (LLV) near the address specified on the Form CA-1 and lifted a large pantry parcel weighing over or about 45 pounds. Appellant reported that, as she was going up the stairs, she felt immediate and excruciating pain in both sides of her groin on the third stair, but continued to the top because the parcel would have felt heavier going back down the stairs. Dr. Halperin described her history of treatment, as well as her history of bilateral direct inguinal herniorrhaphies performed on September 9, 2013.[3] Physical examination of the groin revealed one well-healed two centimeter (cm) herniorrhaphy scar in the right groin and one in the left, both of which, upon palpation, revealed exquisitely sensitive tubular extrusions --one cm on the right, two cm on the left -- of easily-felt implanted mesh overlying recurrent direct hernias, without incarceration. Dr. Halperin diagnosed recurrence of bilateral inguinal hernias without obstruction. He explained that appellant's frequent and repetitive lifting of mail and parcels weighing 35 to 70 pounds weakened the abdominal wall inguinal region overtime, eventually requiring surgical repair. Dr. Halperin concluded that the heavy and bulky parcel she carried up the stairs on December 3, 2019 was "the 'straw that broke the camel's back,' or sudden separation of the few fibers of subcutaneous connective tissue to which surgical mesh had been sutured, causing near-instantaneous protrusion of previously-contained intra-abdominal contents back through the inguinal ring, creating recurrence of both hernias." In a January 15, 2020 work restriction note, he released appellant to full-time work with restrictions, including no lifting, pushing, or pulling over 25 pounds and no overtime, from January 18 through July 18, 2020.

By decision dated June 10, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the December 3, 2019 employment incident occurred, as alleged. It noted that she had not responded to its development questionnaire or addressed the employing establishment's factual challenge. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On August 3, 2020 appellant requested reconsideration. In support of her request, she submitted a July 15, 2020 statement asserting that the package manifest report for the date of injury

[3] Dr. Halperin also opined that appellant's prior bilateral direct inguinal hernias were caused or worsened by factors of her federal employment.

would contradict the employing establishment's assertion that she only delivered an eight-ounce package that day. Appellant related that her union had sent an information request to the employing establishment, but that management had refused to provide the requested documents. Along with her statement, she attached an information request sent from her union vice president, T.S., to the employing establishment requesting copies of the original Form CA-1 completed by management, documents and reports sent to OWCP, and the parcel/package and load truck manifests for December 3, 2019. Appellant also submitted a photo of a box labeled "heavy" and "fragile" accompanied by a screenshot indicating that the photo was taken at 2:54 p.m. on December 3, 2019.

An August 26, 2020 work restriction note from Dr. Halperin advised that appellant could work full time, but was restricted from lifting, pushing, or pulling over 10 pounds through February 27, 2021.

In a September 16, 2020 statement, S.M., the postmaster, reiterated the employing establishment's challenge. He stated that his investigation of the case showed that appellant had a stationary event at the address in question at around 3:00 p.m. on December 3, 2019, but that the only parcel she scanned at the address weighed eight ounces. S.M. also stated that the picture submitted by her showing a package marked "heavy" was misleading because it did not show a tracking number or address and, because employees used the "heavy" red stickers on all heavy objects on a regular basis, concluded that "any employee could have taken this same picture anywhere on the workroom floor." He also submitted a December 3, 2019 email from J.M. showing "stationary event details" indicating that appellant dismounted her vehicle near the address in question that day from 2:50 p.m. to 3:14 p.m. and that one package was scanned during that time.

OWCP also received an October 22, 2020 statement from K.S., the customer living at the address in question, stating that she gave appellant tracking numbers for her pantry parcels. K.S. explained that these can weigh from 60 to 90 pounds and that one box was delivered to her address on or about December 3, 2019 and two boxes were delivered that same day at approximately 3:00 p.m.

By decision dated December 14, 2021, OWCP denied modification of its June 10, 2020 decision.

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

[4] *Supra* note 2.

[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).

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 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.[8] 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.[9] Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.[10]

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.[11] 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.[12] 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.[13]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on December 3, 2019 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

[6] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *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] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

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

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

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

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

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

persuasive evidence.[14] Appellant alleged in her December 4, 2019 Form CA-1 that she sustained an injury to her groin when she lifted a heavy parcel while in the performance of duty. Although the employing establishment challenged the factual basis of her claim, it failed to provide persuasive evidence contradicting her account. It provided "stationary event details" from the date of injury indicating that appellant only scanned one parcel at the address in question. However, this is contradicted by earlier accounts from the employing establishment.

The remaining evidence in the record corroborates appellant's account. The "stationary event details" submitted by the employing establishment show that she dismounted from her vehicle outside the address in question from 2:50 p.m. to 3:14 p.m. on December 3, 2019. A timestamp indicates that appellant took a photograph of a box labeled "heavy" and "fragile" at 2:54 p.m. on December 3, 2019. K.S., the customer to whom appellant was delivering, confirmed that she received multiple pantry packages that could weigh from 60 to 90 pounds on the date of injury, including two boxes at approximately 3:00 p.m. According to M.N., an employing establishment official, appellant requested a Form CA-1 at approximately 3:15 p.m. that day. Appellant sought medical care with Dr. Huang on December 3, 2019 and reported to him that she experienced significant groin pain when delivering a package weighing over 40 pounds. In a December 9, 2019 report, Dr. Halperin related that, on December 3, 2019 at 3:00 p.m., she parked her LLV near the address specified on the Form CA-1 and lifted a large pantry parcel weighing over or about 45 pounds, which caused immediate and excruciating groin pain. The injuries appellant claimed are consistent with the facts and circumstances she set forth, her actions, and the medical evidence she submitted. The Board thus finds that she has met her burden of proof to establish an employment incident in the performance of duty on December 3, 2019 as alleged.

As appellant has established that the December 3, 2019 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.[15] As OWCP found that she had not established fact of injury, it has not evaluated the medical evidence. The Board will, therefore, set aside OWCP's December 14, 2021 decision and remand the case for consideration of the medical evidence of record.[16] After 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 an employment incident in the performance of duty on September 3, 2019 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 September 3, 2019 employment incident.

[14] *See id*.

[15] *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).

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

ORDER

IT IS HEREBY ORDERED THAT the December 14, 2021 decision of the Office of Workers' Compensation Programs is reversed. The case is remanded for further proceedings consistent with this decision of the Board.[17]

Issued: March 17, 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

[17] The Board also notes that the employing establishment issued a Form CA-16 authorization for examination or treatment. 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. *See* 20 C.F.R. § 10.300(c); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).