

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

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<b>S.E., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 22-0537</b>
	)	<b>Issued: March 7, 2023</b>
<b>U.S. POSTAL SERVICE, PLEASANT RIDGE</b>	)	
<b>ANNEX, Greensboro, NC, Employer</b>	)	
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*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 February 28, 2022 appellant filed a timely appeal from a February 23, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on December 24, 2021, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the February 23, 2022 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 4, 2022 appellant, then a 49-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on December 24, 2021 he sustained a herniated disc when changing a flat tire on his route while in the performance of duty. He reported that he went to urgent care because his condition worsened, and he could not move by December 31, 2021. Appellant stated that he also followed up with his primary care physician. On the reverse side of the claim form, his supervisor acknowledged that appellant was injured in the performance of duty. Appellant stopped work on December 31, 2021.

In support of his claim, appellant submitted a January 3, 2022 medical report from Dr. Melissa Champe-Seagle, Board-certified in emergency medicine, who recounted that appellant was changing a tire on December 22 or 23, 2021 stood up from a squatting position, and developed soreness in the lower back, which progressively worsened in the following hours and made it difficult to walk. Dr. Champe-Seagle's examination revealed difficulty bending at the waist due to pain and 4/5 strength in the left lower extremity. She noted that appellant underwent an x-ray at urgent care on January 3, 2022 which revealed multilevel degenerative disc disease, moderate-lower lumbar facet arthropathy, and bilateral nephrolithiasis. Dr. Champe-Seagle diagnosed acute midline low back pain with left-sided sciatica. She again examined appellant on January 10, 2022 finding 4/5 strength in the lower extremities bilaterally, demonstrating focal weakness, as well as decreased sensation to light touch bilaterally in the feet and ankles. Dr. Champe-Seagle noted that he now had sciatica on both sides, not just the left. She diagnosed acute bilateral low back pain with left-sided sciatica and held appellant off work for an additional week.

In a January 18, 2022 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him as to the type of evidence required, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

OWCP subsequently received progress notes dated December 31, 2021 from Caroline MacKellar, a physician assistant, who related that on December 24, 2021 appellant sustained acute onset back strain when changing a tire, on December 25, 2021 he was laying on his stomach on the floor and had great difficulty getting up, and on December 30, 2020 he reinjured his back when carrying a newly delivered safe into the house. Appellant reported bilateral low back pain, sometimes radiating to either leg, and a history of mild chronic intermittent back pain. Ms. MacKellar's examination revealed forward flexion of the lower back to 20 degrees and extension to zero degrees, hip flexion in standing position limited by 50 percent, highly antalgic gait, and cautious positional changes. A lumbar spine x-ray taken on December 31, 2021 demonstrated straightening of lumbar lordosis, multilevel degenerative disc disease, moderate at L5-S1, moderate-lower lumbar facet arthropathy, and bilateral nephrolithiasis, but no acute fracture or spondylolisthesis. Ms. MacKellar diagnosed acute bilateral low back pain, unspecified whether sciatica present. She noted a concern that appellant may have herniated L3-4 and provided generic patient instructions regarding low back pain and herniated disc.

In a progress note dated January 21, 2022, Dr. Vikram Arora, a Board-certified osteopath specializing in physical medicine and rehabilitation, related that appellant's low back pain began while changing a tire on December 23, 2021 and had significantly improved since. His examination revealed bilateral lower lumbar paraspinal tenderness, and positive seated slump test

on the right. Dr. Arora reviewed the December 31, 2021 lumbar spine x-ray and diagnosed acute bilateral low back pain without sciatica. In a January 21, 2022 note, he released appellant to return to full-duty work on January 31, 2022. However, in a January 31, 2022 note, Dr. Arora held appellant off work until March 5, 2022.

Appellant underwent a lumbar spine magnetic resonance imaging (MRI) scan on February 5, 2022, which demonstrated multilevel facet arthropathy and disc bulging causing mild central canal stenosis at the L2-3 and L3-4.

OWCP also received a February 8, 2022 attending physician's report (Form CA-20) from Tyler Crane, a nurse practitioner, relating that appellant injured his low back while changing a tire on December 23, 2021. Mr. Crane diagnosed acute low back pain and checked a box marked "No" indicating that he did not believe that appellant's condition was caused or aggravated by an employment activity. He advised that appellant could resume full-duty work on March 6, 2022.

By decision dated February 23, 2022, OWCP denied appellant's traumatic injury claim, finding that the submitted evidence did not establish that the December 24, 2021 incident occurred, as alleged. 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<sup>3</sup> 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,<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 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 must first be determined whether fact of injury has been established.<sup>7</sup> 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

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

<sup>4</sup> *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).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>6</sup> *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).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

the employment incident at the time, place, and in the manner alleged.<sup>8</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>9</sup>

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.<sup>10</sup> 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.<sup>11</sup> 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.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on December 24, 2021, as alleged.

Appellant has not established the factual component of his claim as he has insufficiently explained how and when the claimed injury occurred.<sup>13</sup> In his January 4, 2022 Form CA-1, he indicated that on December 24, 2021 he sustained an injury when changing a flat tire on his route. However, appellant did not submit a detailed account of the alleged injury or any additional corroborating factual evidence describing how and when he sustained an injury on December 24, 2021. The Board has held that such a vague recitation of facts does not support a claimant's allegation that a specific event occurred to cause a work-related injury.<sup>14</sup>

OWCP, in its January 18, 2022 development letter, informed appellant of the type of evidence needed to establish his traumatic injury claim. It requested that he complete an attached questionnaire and provide a detailed factual description of the alleged employment incident. Appellant, however, did not do so.<sup>15</sup>

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<sup>8</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>9</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>10</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>11</sup> *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

<sup>12</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>13</sup> *See E.C.*, Docket No. 19-0943 (issued September 23, 2019).

<sup>14</sup> *M.C.*, *supra* note 12; *M.B.*, Docket No. 11-1785 (issued February 15, 2012).

<sup>15</sup> *See M.F.*, *supra* note 10.

Appellant has not provided a sufficient description of the alleged employment incident and the mechanism by which he sustained an injury. Therefore, the Board finds that he has not met his burden of proof.<sup>16</sup> As appellant has not met his burden of proof to establish that, an incident occurred in the performance of duty, as alleged, it is unnecessary to address the medical evidence of record regarding causal relationship.<sup>17</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 his burden of proof to establish a traumatic injury in the performance of duty on December 24, 2021, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the February 23, 2022 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 7, 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  
Employees' Compensation Appeals Board

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<sup>16</sup> *H.D.*, Docket No. 15-1698 (issued May 4, 2016).

<sup>17</sup> *J.C.*, Docket No. 19-0542 (issued August 14, 2019); *see M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).