

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

J.J., Appellant

and

**U.S. POSTAL SERVICE, PHOENIX POST
OFFICE, Phoenix, AZ, Employer**

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**Docket No. 22-0957
Issued: March 29, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 7, 2022 appellant filed a timely appeal from a February 4, 2022 merit decision and a May 31, 2022 nonmerit 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

ISSUES

The issues are: (1) whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on November 28, 2021, as alleged; and (2) whether OWCP

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 31, 2022 decision, OWCP received additional evidence. 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.*

properly determined that appellant abandoned her request for an oral hearing before a representative of OWCP's Branch of Hearings and Review.

FACTUAL HISTORY

On December 1, 2021 appellant, then a 45-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on November 28, 2021 she strained her left leg when she stepped out of the sliding door of a work van while in the performance of duty. She alleged that thereafter, she felt pain radiate up her left leg. On the reverse side of the claim form, appellant's supervisor, C.B., acknowledged that she was injured in the performance of duty. However, on the same form, C.B. controverted the claim, asserting that appellant did not immediately report the incident on the date of injury and that she originally reported that she had developed an intermittent but severe pain in her hip/leg, without specifying that her condition was work related. Appellant did not stop work.

In support of her claim, appellant submitted a November 30, 2021 work status note from Sogol Elam, a physician assistant, diagnosing a strain of the left hip and providing work restrictions. Unsigned treatment notes from an urgent care encounter of even date indicated that appellant was prescribed medication related to a workers' compensation claim.

OWCP also received December 2, 2021 emergency room discharge instructions, noting a diagnosis of left hip and leg pain.

A December 2, 2021 return-to-work note signed by Sarah Thompson, a registered nurse, held appellant off work until December 9, 2021.

In a memorandum dated December 3, 2021, OWCP noted that appellant had related that she did not report the employment incident immediately because she did not think the injury would require medical attention, but her condition worsened and she sought treatment at urgent care, after she was unable to see her primary physician on short notice.

In a December 3, 2021 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted urgent care notes from a November 30, 2021 encounter with Mr. Elam, noting that she presented with a chief complaint of joint or extremity pain and had indicated that she stepped out of a van while at work on November 28, 2021 and experienced pain in her left hip that radiated down her leg. She also reported that her pain was aggravated by movement and walking, with associated symptoms of joint tenderness and limping. Mr. Elam assessed a strain of the left hip and ordered medication and alternating application of cold and heat.

December 10, 2021 visit notes signed by Ronald Raybon, a physician assistant, noted that appellant complained of left hip discomfort, back pain, and pain extending to her ankle. Mr. Raybon related that she reported that she stepped out of her work van and felt pain, after which she experienced persistent lower back pain. He assessed lumbar radiculopathy and acute left side low back pain, unspecified whether sciatica present, and recommended evaluation by an

orthopedic surgeon. In a work status note and a duty status report (Form CA-17) of even date, Mr. Raybon noted clinical findings of pain with any movement, reiterated his prior diagnoses, and held appellant off work until December 17, 2021. He also recommended a follow up and provided a referral to an orthopedist.

In a form report dated December 16, 2021, appellant claimed that at 3:00 p.m. on November 28, 2021 she was delivering packages on her route, and stepped out of a van when she felt a sharp pain radiate through her left leg, which worsened after 48 hours. In a Form CA-17 of even date, Dr. Andrew Davey, a family practitioner, diagnosed left hip pain.

In a December 17, 2021 attending physician's report (Form CA-20), Dr. Davey related that he examined appellant on December 16, 2021 and she provided a history of injury that on November 28, 2021 she stepped out of a van and experienced acute pain in her left hip, which had persisted after the injury. He diagnosed left hip pain and checked a box marked "Yes" to indicate his belief that the condition was caused or aggravated by an employment activity. Dr. Davey found her disabled from work through December 31, 2021. In Part B-attending physician's report of an authorization for examination and/or treatment (Form CA-16) of even date, he reiterated the history of injury and his findings.

In a January 28, 2021 Form CA-17, Dr. Davey noted that appellant was still limited due to left hip pain and was unable to perform regular-duty work.

By decision dated February 4, 2022, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the incident occurred, as alleged. It noted that she did not respond to its developmental questionnaire. Consequently, OWCP found that appellant had not met the requirements to establish an injury as defined by FECA.

OWCP continued to receive evidence, including a February 4, 2022 Form CA-17 signed by an unknown medical provider diagnosing sciatica and a herniated disc, and noting clinical findings of pain and an absent heel reflex.

A February 1, 2022 magnetic resonance imaging (MRI) report of appellant's lumbar spine noted an impression of L5-S1 compression of the exiting nerve root from a left foraminal extruded disc component, and a large volume left paracentral extrusion which flattened the thecal sac and contacted the descending left S1 nerve root.

On February 14, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In an April 13, 2022 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for May 19, 2022 at 12:45 p.m. Eastern Standard Time (EST). The notice included a toll-free number to call and provided the appropriate passcode for access to the hearing. The hearing representative mailed the notice to her last known address of record. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated May 31, 2022, OWCP found that appellant had abandoned her request for an oral hearing as she had received written notification of the hearing 30 days in advance but

failed to appear. It further found that there was no indication in the case record that she had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain her failure to appear.

LEGAL PRECEDENT -- ISSUE 1

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, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is that 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

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. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on 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 the employee's statements in determining whether a *prima facie* case has been established.⁸ An employee's statement

³ *Supra* note 1.

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *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 *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

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.⁹

ANALYSIS -- ISSUE 1

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on November 28, 2021, as alleged.

On her December 1, 2021 Form CA-1 appellant alleged that on November 28, 2021 she strained her left leg when she stepped out of the sliding door of a van while on her delivery route. On the reverse side of the claim form, the employing establishment acknowledged, by checking a box marked “Yes,” that she was in the performance of duty when injured. Although the employing establishment on the same form controverted the claim arguing that appellant had not reported the incident immediately, it has not provided any strong or persuasive evidence to refute the occurrence of the November 28, 2021 employment incident. 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 persuasive evidence.¹⁰

Further the medical evidence contemporaneous with the alleged employment incident establishes that just several days following the incident appellant sought treatment at an urgent care on November 30, 2021 where she recounted that on November 28, 2021 she had stepped out of a van while at work and experienced pain in her left hip that radiated down her leg. She also sought treatment at an emergency room a few days later on December 2, 2021 and was diagnosed with left hip and leg pain. In notes dated December 10 and form reports dated December 16 and 17, 2021, appellant continued to relate a history of injury that on November 28, 2021 she stepped out of a van while at work and experienced acute pain in her left hip, which had persisted. Since there are no inconsistencies in the evidence that cast serious doubt upon the validity of the claim, the Board finds that she has established a traumatic incident in the performance of duty on November 28, 2021, as alleged.

As appellant has established that an incident occurred in the performance of duty on November 28, 2021 as alleged, the question becomes whether the incident caused an injury.¹¹ As OWCP found that she 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.¹² After this and other such further development as deemed necessary, OWCPs shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted November 28, 2021 employment incident.

⁹ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁰ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); see also *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹¹ *D.F.*, *id.*; *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

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

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that a traumatic injury occurred in the performance of duty on November 28, 2021, as alleged.¹³

ORDER

IT IS HEREBY ORDERED THAT the February 4, 2022 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board. The May 31, 2022 decision of the Office of Workers' Compensation Programs, regarding the hearing abandonment, is set aside as moot.

Issued: March 29, 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

¹³ The Board notes that the employing establishment issued a Form CA-16, dated December 17, 2021. 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); 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).