

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

B.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Charleston, WV, Employer**

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**Docket No. 22-0972
Issued: November 2, 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
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On June 6, 2022 appellant filed a timely appeal from a December 10, 2021 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 her burden of proof to establish a traumatic injury in the performance of duty on September 2, 2021, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 10, 2021 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.*

FACTUAL HISTORY

On September 9, 2021 appellant, then a 62-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on September 2, 2021 at 9:50 a.m. she experienced pain in her lower back, left hip, and left leg when she walked through a set of double doors while in the performance of duty. On the reverse side of the claim form, her supervisor, J.H., acknowledged that she was in the performance of duty when injured. Appellant stopped work on the date of injury.

In a statement dated September 2, 2021, appellant indicated that she was walking through double doors and felt a sharp, stabbing pain through her lower back, above her left hip. She further noted that her left leg did not want to move, and that she yelled to S.H., a co-worker, who helped her into a chair until an ambulance arrived.

In a witness statement of even date, S.H. indicated that on September 2, 2021 appellant was returning from her case after moving her vehicle so that a route carrier could leave when she stopped at S.H.'s case and yelled her name. S.H. noted her back was turned but observed tears streaming down appellant's face when she responded, and she collapsed into S.H.'s arms. S.H. asked two other employees to retrieve a chair for appellant and locate a manager.

In an attending physician's report (Form CA-20) and corresponding emergency room note dated September 2, 2021, Dr. Douglas Jentilet, an emergency medicine specialist, noted that appellant related complaints of pain in her lower back, which she attributed to opening and walking through double doors at work. He performed a physical examination, which revealed mild tenderness to palpation near the L5 paraspinal musculature and pain with straight leg raise testing on the left. Dr. Jentilet diagnosed a lower back strain and recommended that appellant remain out of work for a couple of days. He checked a box marked "Yes" that the condition was caused or aggravated by the described employment activity.

On September 9, 2021 Dr. Robert J. Curtis, a Board-certified emergency medicine specialist, recommended modified-duty restrictions for appellant due to low back pain caused by walking through double doors.

In notes dated September 18, 2021, Dr. James Morgan, a Board-certified family practitioner, recommended ongoing modified-duty restrictions due to low back and leg pain from pushing open a door.

In a report dated September 25, 2021, Dr. Jessica Aliff, an osteopathic family practice specialist, described appellant's complaints of ongoing pain, numbness, and tingling in her lower back and left leg due to a work injury on September 2, 2021. She diagnosed a sprain of the ligaments of the lumbar spine and recommended ongoing modified-duty restrictions. A duty status report (Form CA-17) of even date signed by Dr. Aliff provided as the history that appellant walked through a set of double doors on September 2, 2021 and felt pain in her lower back.

In a note dated October 9, 2021, Dr. Curtis diagnosed left-sided sciatica due to an injury on September 2, 2021 and advised that appellant remain off.

On October 23, 2021 Dr. Aliff released appellant to return to work with restrictions and referred her for magnetic resonance imaging (MRI) scan of the lumbar spine. In an undated Form CA-20, she noted a history that she pushed a door open at work on September 2, 2021 and felt a pull on her left side.

In an e-mail dated October 25, 2021, A.L., an employing establishment representative, advised E.M., an employing establishment occupational health processing specialist, that appellant had provided several inconsistent statements regarding her alleged injury. Appellant noted that on September 2, 2021 she went outside to move her car, came back in, walked across the floor, and then stopped and screamed out in pain. A.L. claimed that appellant related that she did not know what happened, but that she had spinal stenosis. In another conversation, appellant indicated that she either pulled the door to go outside or pushed the door to come inside, which she noted was the opposite of the direction that the doors swung. A.L. also noted that appellant had previously sought disability benefits for other health issues.

In a development letter dated November 5, 2021, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion, which included a request for a specific statement describing how her injury occurred in response to the employing establishment's October 25, 2021 e-mail. OWCP afforded appellant 30 days to provide the necessary evidence.

In a Form CA-20 dated November 6, 2021, Dr. Morgan diagnosed sciatica and sprain of the lumbar spine due to pushing a door open at work on September 2, 2021.

A report of MRI scan of the lumbar spine dated November 19, 2021 revealed significant bilateral arthropathy and disc disease at L3-L4 and L4-L5, with progression at the L4-L5 level when compared with a prior November 5, 2018 study.

In a November 27, 2021 report, Dr. Aliff noted that appellant provided a history of experiencing a pull on the left lower side of her back when she reached or leaned to push through a set of double doors. She noted that she continued to walk and the pain worsened, began to shoot down her left leg, and that her left leg became weak. Dr. Aliff performed a physical examination, which revealed limited range of motion and pain with flexion and extension of the lower back and tenderness to palpation of the paraspinal musculature, sacroiliac (SI) joint, left piriformis, and left greater trochanter. She diagnosed left-sided sciatica and a sprain of the ligaments of the lumbar spine. Dr. Aliff released appellant to return to work with restrictions.

On December 1, 2021 the employing establishment offered appellant a limited-duty position as a modified rural carrier associate.

In e-mail correspondence dated December 2, 2021, A.L. advised E.M. that appellant had requested to use her accrued annual and sick leave pending her retirement in lieu of refusing the December 1, 2021 job offer.

By decision dated December 10, 2021, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the events occurred as

alleged. Therefore, it 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, 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.⁸ In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on the employee's statements. 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.⁹ An

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 *K.E.*, Docket No. 22-0110 (issued March 8, 2023); *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 *J.J.*, Docket No. 22-0957 (issued March 29, 2023); *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 *J.H.*, Docket No. 22-1113 (issued March 7, 2023); *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

⁹ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *Betty J. Smith*, 54 ECAB 174 (2002).

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.¹⁰

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 September 2, 2021, as alleged.

In her September 9, 2019 Form CA-1, appellant indicated that on September 2, 2021 she felt pain in her lower back and left leg while walking through a set of double doors. On the reverse side of the claim form, her supervisor, J.H., acknowledged that she was in the performance of duty when injured. In a witness statement dated September 2, 2021, S.H., appellant's coworker, related that she observed tears streaming down appellant's face before she collapsed into S.H.'s arms. Appellant sought medical treatment on the date of injury. In medical reports dated September 2 and 18 and October 23, 2021, Drs. Jentilet, Morgan, and Aliff, respectively, indicated that she reported injuring her back while opening a set of double doors. The employing establishment, in its e-mail dated October 25, 2021, noted that appellant initially indicated that she did not know what happened when she walked across the floor and screamed in pain on September 2, 2021 but subsequently related she either pushed or pulled on the doors when she came inside. Appellant then clarified the incident to Dr. Aliff on November 27, 2021, who noted that she related that when she reached or leaned forward to push a set of double doors, she felt a pull on the left lower side of her back.

Appellant has maintained that her injury occurred when she opened and walked through double doors on September 2, 2021, which was acknowledged by her supervisor, as well as reported by her attending physicians, Drs. Jentilet, Morgan, and Aliff. As noted, an employee's statement alleging that an injury occurred at a given time and place, and in a given manner, is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹ There are no inconsistencies in the evidence sufficient to cast serious doubt upon the validity of the claim.¹² 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 September 2, 2021, as alleged.

As appellant has established that an incident occurred in the performance of duty on September 2, 2021, as alleged, the question becomes whether the incident caused an injury.¹³ 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.¹⁴ After such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing

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

¹¹ *E.S.*, Docket No. 22-1339 (issued May 16, 2023); *D.F.*, *supra* note 9; *D.B., id.*.

¹² *E.S., id.*

¹³ *D.F.*, *supra* note 9; *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁴ *L.G.*, Docket No. 21-0343 (issued May 9, 2023); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

whether appellant has met her burden of proof to establish an injury causally related to the accepted September 2, 2021 employment incident, and any attendant disability.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on September 2, 2021, as alleged. The Board further finds that this case is not in posture for decision regarding whether she has established an injury causally related to the accepted September 2, 2021 employment incident.¹⁵

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 2, 2023
Washington, DC

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

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

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ *K.P.* Docket No. 21-0828 (issued December 22, 2021).