

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

A.G., Appellant

and

U.S. POSTAL SERVICE, ROBERTSVILLE
POST OFFICE, San Jose, CA, Employer

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**Docket No. 23-0716
Issued: November 14, 2023**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 25, 2023 appellant filed a timely appeal from a March 8, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).¹ Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that following the March 8, 2023 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 evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on October 4, 2022, as alleged.

FACTUAL HISTORY

On October 28, 2022 appellant, then a 42-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 4, 2022 at 9:30 p.m., he sustained head and back injuries when he looked back toward a coworker, and tripped and fell over a step at the front of a property while in the performance of duty. He stopped work on October 12, 2022 and returned to work on October 18, 2022. On the reverse side of the claim form, S.S., appellant's supervisor, acknowledged that appellant was injured in the performance of duty, but contended that her knowledge of the facts did not comport with appellant's statement as appellant did not provide details of the injury and had worked for 10 days after October 4, 2022 before calling out sick.

OWCP received reports dated October 14, 2022, wherein Dr. Jin Kyu Kim, a physician specializing in occupational medicine and physiatry, related that on October 4, 2022 appellant tripped and fell forward onto his left side while carrying mail at night. Appellant continued to work following the incident but developed pain from his "neck to lower back, mainly between scapula," which appellant treated at home with ice, rest, and over-the-counter medication until he could no longer work as of October 12, 2022. On examination, Dr. Kim observed paraspinal tenderness to palpation throughout the cervical, thoracic, and lumbar regions. He diagnosed a neck sprain, thoracic sprain, and lumbar sprain. Dr. Kim held appellant off work through October 16, 2022 due to "[u]ncontrolled [s]ymptoms," and noted work restrictions through October 28, 2022.

In reports dated October 26, 2022, Dr. Kim continued to hold appellant off work through October 29, 2022 and prescribed physical therapy. He returned appellant to modified duty with restrictions, effective October 30, 2022.

OWCP received additional reports by Dr. Kim dated November 16, 2022 through January 6, 2023, maintaining appellant on modified duty with restrictions through February 17, 2023.⁴

In a development letter dated January 30, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In a February 7, 2023 report of work status (Form CA-3), the employing establishment noted that appellant had stopped work on October 5, 2022, and returned to full-time modified-duty work on October 18, 2022.

By decision dated March 8, 2023, OWCP denied appellant's traumatic injury claim, finding that the alleged October 4, 2022 employment incident did not occur as he described. It

⁴ November 16, 2022 x-rays of the cervical, thoracic, and lumbar areas of the spine demonstrated focal cervical spondylosis at C6-7, mild levoconvex curvature of the superior thoracic spine, and a normal lumbar spine.

noted that he had not responded to the January 30, 2023 development questionnaire. 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 FECA⁵ 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,⁶ 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.⁷ 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.⁸

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁹ There are two components involved in establishing fact of injury. First, 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. Second, the employee must submit sufficient evidence, in the form of probative medical 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 of 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.¹² 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

⁵ *Supra* note 1.

⁶ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁷ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁸ *P.A.*, Docket No. 18-0559 (issued January 29, 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).

⁹ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

¹⁰ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Appgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

¹¹ *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

¹² *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

statement in determining whether a *prima facie* case has been established.¹³ 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.¹⁴

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on October 4, 2022, as alleged.

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.¹⁵ In his October 28, 2022 Form CA-1, appellant alleged that on October 4, 2022 he sustained head and back injuries when he tripped on a step and fell to the ground while in the performance of duty. Although the employing establishment challenged the factual basis of his claim, it failed to provide persuasive evidence contradicting his account. The primary basis for the challenge was that appellant did not provide specific details of the October 4, 2022 employment incident and had worked for 10 days following the injury. However, appellant provided a detailed description of the time, location, circumstances, and mechanism of the claimed injury on his Form CA-1.

Further, the history of the employment incident is supported by the medical evidence of record. Specifically, Dr. Kim related in his October 14, 2022 reports that on October 4, 2022 appellant tripped and fell onto his left side while carrying mail at night, and that he developed pain from his neck to his low back which initially responded to ice, rest, and over-the-counter medication. He further related that on October 12, 2022 appellant's symptoms became uncontrolled, and he stopped work. The injuries appellant claimed are consistent with the facts and circumstances he recounted, his course of action, and the medical evidence he submitted. The Board, therefore, finds that he has met his burden of proof to establish a traumatic incident in the performance of duty on October 4, 2022, as alleged.

As appellant has established that the October 4, 2022 employment incident occurred as alleged, the question becomes whether this incident caused an injury.¹⁶ As OWCP found that he 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. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

¹³ *L.D.*, Docket No. 16-0199 (issued March 8, 2016), *Betty J. Smith, id.*

¹⁴ *See J.B.*, Docket No. 22-1201 (issued April 26, 2023); *R.A.*, Docket No. 21-1370 (issued February 7, 2023); *M.V.*, Docket No. 19-1040 (issued August 12, 2022); *J.B.*, Docket No. 19-1487 (issued January 14, 2020); *M.S.*, Docket No. 22-0106 (issued August 9, 2022); *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *W.C.*, Docket No. 18-1651 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁵ *Id.*

¹⁶ *See R.A.*, *supra* note 14; *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).

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on October 4, 2022, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2023 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: November 14, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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