United States Department of Labor
Employees' Compensation Appeals Board

T.V., Appellant	)	
and	)	**Docket No. 22-0968**
	)	**Issued: October 23, 2023**
U.S. POSTAL SERVICE, POST OFFICE, Bedford Park, IL, Employer	)	

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
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 12, 2022 appellant filed a timely appeal from a March 9, 2022 merit decision and a June 6, 2022 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on January 8, 2022, as alleged; and (2) whether OWCP properly determined that appellant abandoned his request for an oral hearing.

FACTUAL HISTORY

On January 20, 2022 appellant, then a 65-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on January 8, 2022 he fractured his left thumb when he

[1] 5 U.S.C. § 8101 *et seq.*

tripped on a floor jack and fell while in the performance of duty. He stopped work on January 9, 2022.

In an undated statement, appellant related that, at approximately 1:00 p.m., on January 8, 2022, as he was preparing to deliver his route, he decided to put the mail into a container. The back room was dark and it was icy outside, so he was still wearing ice cleats. Appellant related that he grabbed the mail container with his left hand to move it so that he could put mail inside, but tripped over a floor jack, twisted, and fell hard. He indicated that the mail went flying and he picked it up, placed it into the container, and finished his routes.

In an undated statement, a coworker advised that he had contacted appellant on January 8, 2022 at 4:19 p.m. asking how his day had gone and appellant had replied that it had gone well and he was already home. The witness replied to appellant that "[I'm] glad you got everything done safely," to which appellant responded, "thanks," but he did not mention any accident or injury. However, when the witness contacted appellant on January 9, 2022 to let him know that he would need to assist package delivery the following day, appellant responded that he had fallen and injured his thumb on January 8, 2022 at 1:00 p.m., but had thought it was just a sprain. The witness met appellant at the office to discuss how the accident had happened and appellant demonstrated how he pulled a mail container toward him rather than pushing it as he was trained to do, and he further indicated that he had left the lights off and was wearing ice cleats in the building when he was injured, which may have contributed to the fall. The witness advised that if appellant had followed proper training the accident could have been avoided.

In another undated statement, appellant related that, at approximately 1:00 p.m., on January 8, 2022, as he was preparing to deliver his route, he decided to put the mail into a container. The back room was dark and it was icy outside, so he was still wearing ice cleats. Appellant related that he grabbed the mail container with his left hand to move it so that he could put mail inside, but tripped over a floor jack, twisted, and fell hard. He indicated that the mail went flying and he picked it up, placed it into the container, and finished his routes.

A January 9, 2022 work status note from a nurse practitioner indicated that appellant was absent from work due to a January 9, 2022 injury.

In January 12, 2022 progress notes, Dr. Elizabeth Plocher, a Board-certified orthopedic surgeon, indicated that appellant reported injuring his left thumb moving equipment at work on January 8, 2022. She noted that he developed left thumb pain moving equipment, but did not know exactly what had happened to his thumb or whether it was hyperextended, crushed, or pulled. Dr. Plocher advised that appellant went to prompt care on January 9, 2022 and underwent radiographs. She opined that the radiographs were unremarkable and showed degenerative changes at the interphalangeal joint of his thumb with no gross evidence of fracture. Dr. Plocher further opined that appellant had likely aggravated underlying osteoarthritis. She diagnosed irritated underlying and preexisting osteoarthritis, and recommended immobilization in a thumb splint. The January 12, 2022 progress notes contain a separate entry from a nurse indicating that appellant reported that he was moving items at the employing establishment when he fell and injured his thumb. In a letter of even date, Dr. Plocher ordered work restrictions and a splint.

Progress notes from a January 20, 2022 encounter with Dr. Plocher indicated that appellant sustained a work injury on January 8, 2022 and continued to experience pain and stiffness in his left thumb. Dr. Plocher diagnosed degenerative changes to the thumb and reiterated that he likely aggravated the underlying degenerative changes with his work injury. In a work status note of even date, she provided work restrictions.

In a January 26, 2022 development letter, 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 submit the necessary evidence.

In response, OWCP received an unsigned, undated letter in which appellant related that he fell and injured his left thumb, went to prompt care on January 9, 2022 and was referred to an orthopedic physician that he saw on January 12 and 20, 2022.

In an addendum to her January 20, 2022 progress notes, Dr. Plocher opined that, based on appellant's description of the injury, she supported his claim that he had a significant injury at work that had aggravated his underlying and preexisting arthritis. She further opined that, without this work injury, it was "unlikely that [appellant] would have had any exacerbation of pain related to his osteoarthritis, especially given the fact that his arthritis was completely asymptomatic prior to this injury at work."

X-rays of appellant's left fingers obtained on January 20, 2022 showed degenerative changes of the left thumb.

In February 7, 2022 progress notes, Dr. Plocher noted that appellant was feeling better, but continued to report pain to the radial aspect of his left thumb and interphalangeal joint. X-ray results of even date for appellant's left hand noted an impression of degenerative changes of the thumb.

OWCP also received a February 7, 2022 duty status report (Form CA-17) from Dr. Plocher noting that appellant fell and injured his left thumb, and a return to work note of even date ordering work restrictions and a splint.

In a March 3, 2022 return to work note, Dr. Plocher released appellant to return to work without restrictions.

By decision dated March 9, 2022, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish that the events or incident occurred as alleged. Consequently, it found that he had not met the requirements to establish an injury as defined by FECA.

On March 14, 2022 appellant requested either a review of the written record or an oral hearing before OWCP's Branch of Hearings and Review.

Appellant continued to submit evidence, including January 9, 2022 progress notes from a nurse practitioner, who noted that he had fallen the day before and caught himself to protect his back and head. He had experienced pain in the base of his left thumb since that time. Appellant

also reported initial bleeding around the nail bed and pain to the base of his left thumb after the injury. The nurse practitioner observed mild swelling and faint bleeding at the base of his nail bed and noted that a preliminary reading of a left thumb x-ray was positive for a fracture of the proximal phalanx left thumb. She diagnosed an open nondisplaced fracture of the proximal phalanx of the left thumb and issued an orthopedic surgery referral.

X-ray results of even date noted an impression that an acute fracture was difficult to exclude, but the appearance of fracture at the radial base of the first proximal phalanx may have been due to an overlapping skin fold and sesamoid bone, rather than a fracture.

In progress notes dated March 3, 2022, Dr. Plocher found that appellant was doing well and could work without restrictions. She opined that he had aggravated his underlying arthritis and would not have required treatment if not for the January 8, 2022 injury.

On March 30, 2022 Dr. Plocher related that appellant had sustained a left thumb crush injury on January 8, 2022 with primary diagnoses of a sprain of the left thumb and aggravation of underlying osteoarthritis at the interphalangeal joint of the left thumb. She reiterated her opinion that he likely would not have had any pain without the injury at the employing establishment, and that his injury directly resulted in his pain and the required medical treatment and therapy. In a return to work note of even date, Dr. Plocher allowed appellant to return to work without restrictions.

In an April 18, 2022 notice, OWCP's hearing representative informed appellant that it had scheduled a telephonic hearing for May 26, 2022 at 2:15 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 appellant's last known address of record. Appellant did not appear for the hearing and no request for postponement was made.

By decision dated June 6, 2022, OWCP found that appellant had abandoned his request for an oral hearing as he 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 he had contacted the Branch of Hearings and Review either prior to or after the scheduled hearing to explain the failure to appear.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under FECA[2] 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,[3] 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

[2] *Id*.

[3] *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).

employment injury.[4] 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.[5]

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, 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.[6]

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.[7] 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.[8]

ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish a traumatic incident occurred in the performance of duty on January 8, 2022, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time, place, and in the manner alleged is of great probative value and will stand unless refuted by strong or persuasive evidence.[9] Appellant alleged in his January 20, 2022 Form CA-1 that on January 8, 2022 he fractured his left thumb or the sesamoid bone in his thumb when he tripped on a floor jack and fell while placing mail in a container. On the reverse side of the Form CA-1, the employing establishment acknowledged that he was in the performance of duty when injured, his injury was

[4] *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).

[5] *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).

[6] *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).

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

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

[9] *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).

not caused by a third party, and its knowledge of the facts about the injury were consistent with his statements. Appellant contacted his supervisor the afternoon of January 9, 2022 and informed him that he had fallen and injured his thumb at 1:00 p.m. on January 8, 2022 but had thought it was just a sprain. This short, explained delay in reporting the incident is not persuasive evidence refuting appellant's account.[10]

Appellant provided a consistent and substantially similar description of the incident to medical care providers.[11] On January 9, 2022 he reported to a nurse practitioner that he fell yesterday, but was unsure how he caught himself, as he was protecting his back and head when he fell. The nurse practitioner observed mild swelling and faint bleeding at the base of his nail. On January 12, 2022 Dr. Plocher indicated that appellant reported sustaining a left thumb injury on January 8, 2022 while moving equipment at work, and in a separate entry of even date, a nurse indicated that he reported that he was moving items at the employing establishment when he fell and injured his thumb. There are no inconsistencies in the evidence sufficient to cast serious doubt upon the validity of the claim, thus, the Board finds that he has met his burden of proof to establish an employment incident in the performance of duty on January 8, 2022, as alleged.[12]

As appellant has established that, an incident occurred in the performance of duty on January 8, 2022 as alleged, the question becomes whether the incident caused an injury.[13] 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.[14] After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish an injury causally related to the accepted January 8, 2022 employment incident.[15]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on January 8, 2022 as alleged. The Board further finds that the case is not in posture for decision regarding whether he has established an injury causally related to the accepted January 8, 2022 employment incident.

[10] *See M.S.*, Docket No. 22-0106 (issued April 4, 2022) (finding that a delay in reporting of less than one day was not persuasive evidence refuting an appellant's account); *see also M.C.*, *id.*; *D.B.*, *id.*

[11] *See K.H.*, Docket No. 22-0370 (issued July 21, 2022); *J.Z.*, Docket No. 14-455 (issued June 16, 2014) (appellant met his burden of proof to establish fact of injury where his various accounts were "substantially similar," and reasoning that "the minor variations in how appellant's medical providers described the incident do not preclude him from establishing that the claimed incident occurred as alleged.")

[12] *Id.*; *V.M.*, Docket No. 08-2304 (issued May 21, 2009).

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

[15] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

ORDER

IT IS HEREBY ORDERED THAT the March 9, 2022 decision of the Office of Workers' Compensation Programs is reversed, and the June 6, 2022 decision of the Office of Workers' Compensation Programs is set aside as moot. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 23, 2023
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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