

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

S.F., Appellant	)	
	)	
and	)	Docket No. 23-0586
	)	Issued: October 6, 2023
U.S. POSTAL SERVICE, POST OFFICE,	)	
Jonesboro, GA, Employer	)	
	)	

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

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
JANICE B. ASKIN, Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 17, 2023 appellant filed a timely appeal from a February 27, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP).<sup>1</sup> Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of this case.

**ISSUE**

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on December 19, 2022, as alleged.

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<sup>1</sup> The Board notes that following the February 27, 2023 decision, the Board and OWCP received additional evidence. 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.*

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **FACTUAL HISTORY**

On January 16, 2023 appellant, then a 45-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2022 she injured her left shoulder in a motor vehicle accident while in the performance of duty. She stopped work on January 12, 2023. On the reverse side of the form, appellant's supervisor, D.H., acknowledged that she was injured in the performance of duty. However, on the same form, he controverted the claim, as his knowledge of events did not agree with those provided by appellant. D.H. reported that he was the first supervisor on the scene and that she had signed an affidavit indicating that she was not injured at the time of the employment-related motor vehicle accident. He further related that appellant sought medical treatment after two days and returned to modified-duty work with no driving. Appellant continued to work until January 2023 when she asserted that she should not be driving employing establishment vehicles.

In a January 23, 2023 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. In a separate development letter of even date, OWCP requested that the employing establishment provide evidence regarding appellant's route and the address of the occurrence of the motor vehicle accident. It afforded both parties 30 days to respond.

On December 21, 2022 appellant sought treatment with Karrie Pusateri, a nurse practitioner, due to injuries to her left shoulder, neck, and hip as a result of a motor vehicle accident. She underwent left shoulder x-rays.

In notes dated January 25, February 2, and February 9, 2023, Dr. Jay Morgan, a Board-certified neurosurgeon, indicated that appellant was injured in a motor vehicle accident on December 19, 2022. He noted her neck, left shoulder, and left hip symptoms. Dr. Morgan diagnosed acute strain of the neck muscles, left hip strain, and left shoulder strain.

Appellant also provided notes from physical therapists.

By decision dated February 27, 2023, 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.

## **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 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

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<sup>3</sup> *Id.*

limitation 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 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on December 19, 2022, as alleged.

On her January 16, 2023 Form CA-1 appellant alleged that on December 19, 2022 she injured her left shoulder in an employment-related motor vehicle accident. On the reverse side of the claim form, the employing establishment acknowledged, by checking a box marked "Yes,"

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<sup>4</sup> *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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

<sup>8</sup> *J.J.*, Docket No. 22-0957 (issued March 29, 2023); *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

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

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 injuries resulting from the December 19, 2022 motor vehicle accident immediately, it has not provided any strong or persuasive evidence to refute the occurrence of the December 19, 2022 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.<sup>10</sup>

Further the medical evidence contemporaneous with the alleged employment incident establishes that on December 21, 2022, just two days following the incident, appellant sought treatment from Ms. Pusateri, a nurse practitioner where she recounted that she was injured in a motor vehicle accident. Appellant also sought treatment with Dr. Morgan beginning on January 25, 2023, due to injuries sustained in a motor vehicle accident on December 19, 2022. 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 December 19, 2022, as alleged.

As appellant has established that an incident occurred in the performance of duty on December 19, 2022 as alleged, the question becomes whether the incident caused an injury.<sup>11</sup> 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.<sup>12</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish an injury causally related to the accepted December 19, 2022 employment incident.

### CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on December 19, 2022, as alleged.

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<sup>10</sup> *J.J.*, *supra* note 8; *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *see also M.C.*, *id.*; *D.B.*, *id.*

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

<sup>12</sup> *J.J.*, and *D.F.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, *supra* note 8.

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 27, 2023 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.

Issued: October 6, 2023  
Washington, DC

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

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

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