

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

S.H., Appellant	)	
	)	
and	)	Docket No. 23-0363
	)	Issued: September 20, 2023
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER/FACILITY, Milan, 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  
VALERIE D. EVANS-HARRELL, Alternate Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On January 16, 2023 appellant filed a timely appeal from a September 7, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the September 7, 2022 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 additional evidence for the first time on appeal. *Id.*

## ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on July 28, 2022, as alleged.

## FACTUAL HISTORY

On July 29, 2022 appellant, then a 30-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on July 28, 2022 she sustained an injury to her left shoulder when she was pulling out gaylord mail containers with a pallet jack while in the performance of duty. She indicated that she pulled on what she thought was a lowered pallet and turned at the same time, causing a pop in her left shoulder and pain throughout her left arm, which worsened throughout the night. On the reverse side of the claim form, appellant's supervisor, J.S., acknowledged that the injury occurred in the performance of duty. Appellant stopped work on July 29, 2022, and returned to work on August 1, 2022. The employing establishment alleged that she injured herself due to willful misconduct as she failed to use proper workplace procedures in removing gaylords from the machine.

In an August 3, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In support of her claim, appellant submitted a July 29, 2022 hospital report from Dr. Matthew D. Hanson, an emergency medicine physician. Dr. Hanson reported that she presented to the emergency department for shoulder pain. Appellant reported that, the prior evening at work, she was lifting boxes with a pallet holder, which she thought was on the ground completely, but in fact was not, causing her to drop the boxes. She reported feeling a pop and intense pain in her left shoulder. Appellant described experiencing numbness down her arm and shoulder blade, with the pain worsening the following day. Physical examination findings revealed tenderness over the posterior left shoulder blade. X-rays of the left shoulder revealed no evidence of acute left shoulder fracture, no dislocation, intact acromioclavicular and glenohumeral joints, and postoperative changes of the median sternotomy. Dr. Hanson diagnosed acute pain of the left shoulder, recommended wearing a sling, and provided follow-up instructions upon discharge of appellant.

An undated attending physician's report, Part B of an authorization for examination and/or treatment (Form CA-16), discussed the first examination of appellant on July 29, 2022 for her left shoulder employment incident. Recommendations were provided for orthopedics to treat the left shoulder torn cartilage.

By decision dated September 7, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the July 28, 2022 employment incident occurred, as alleged. It concluded, therefore, that the requirements had not been met 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 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. First, 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. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>7</sup>

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.<sup>8</sup> The employee has not met his or her burden of proof to establish the occurrence of an injury when there are inconsistencies in the evidence that cast serious doubt upon 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 an employee's statements in determining whether a *prima facie* case has been established.<sup>9</sup> An 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.<sup>10</sup>

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

<sup>4</sup> *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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> *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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> *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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> *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>8</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667-71 (1987).

<sup>9</sup> *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

<sup>10</sup> *See K.H., id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

## 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 July 28, 2022, as alleged.

As noted above, 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>11</sup> Appellant alleged that she sustained a left shoulder injury on July 28, 2022 when she was pulling out gaylord mail containers with a pallet jack that she thought was lowered and turned at the same time, causing a pop in her left shoulder and pain throughout her left arm. She described the incident on her July 29, 2022 Form CA-1, promptly notified her supervisor, and sought emergency medical treatment the following day. Appellant also provided reports from an emergency department dated July 29, 2022, the day immediately following the employment incident. Dr. Hanson's history of injury provided additional details and discussion of the employment incident and further substantiated her account of the July 28, 2022 employment incident. The injuries appellant claimed, and the initial medical treatment received, are all consistent with the facts and circumstances she set forth in her Form CA-1.<sup>12</sup>

There are no inconsistencies in the evidence that, cast serious doubt upon the validity of the claim; therefore, the Board finds that she has established a traumatic incident in the performance of duty on July 28, 2022, as alleged.<sup>13</sup>

As appellant has established that the July 28, 2022 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.<sup>14</sup> Because 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>15</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 July 28, 2022 employment incident.<sup>16</sup>

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<sup>11</sup> *Id.*

<sup>12</sup> *See F.F.*, Docket No. 22-0266 (issued September 27, 2022); *C.H.*, Docket No. 19-1781 (issued November 13, 2020).

<sup>13</sup> *C.B.*, Docket No. 21-0670 (issued January 27, 2022).

<sup>14</sup> *See L.O.*, Docket No. 20-0280 (issued October 1, 2021); *M.C.*, *supra* note 10.

<sup>15</sup> *A.T.*, Docket No. 22-1103 (issued December 2, 2022).

<sup>16</sup> 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. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. 20 C.F.R. § 10.300(c); *P.R.*, Docket No. 18-0737 (issued November 2, 2018); *N.M.*, Docket No. 17-1655 (issued January 24, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

**CONCLUSION**

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on July 28, 2022, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 7, 2022 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: September 20, 2023  
Washington, DC

Patricia H. Fitzgerald, Deputy 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