

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

M.S., Appellant)	
)	
and)	Docket No. 23-0502
)	Issued: September 20, 2023
DEPARTMENT OF JUSTICE, FEDERAL)	
BUREAU OF PRISONS, FEDERAL)	
CORRECTIONAL INSTITUTION MEDIUM II,)	
Victorville, CA, 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
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On February 27, 2023 appellant filed a timely appeal from a February 22, 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 During the pendency of this appeal, OWCP issued a June 13, 2023 decision vacating the February 22, 2023 decision and remanding the case for further development. The Board and OWCP may not exercise simultaneous jurisdiction over the same issue in the same case at the same time. Thus, OWCP's June 13, 2023 decision is null and void. 20 C.F.R. §§ 501.2(c)(3), 10.626; A.C., Docket No. 18-1730 (issued July 23, 2019); *M.C.*, Docket No. 18-1278, n.1 (issued March 7, 2019); *Jacqueline S. Harris*, 54 ECAB 139 (2002); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the February 22, 2023 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.*

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on December 2, 2022, as alleged.

FACTUAL HISTORY

On December 6, 2022 appellant, then a 39-year-old education and training technician, filed a traumatic injury claim (Form CA-1) alleging that on December 2, 2022 he injured his back when he was unloading a box of books from a cart while in the performance of duty. He related that he developed intense pain in his back, which radiated down his leg and left him hunched over in pain until a staff member arrived to assist him. The claim form included the name of a witness, C.G., and on the reverse side of the claim form an employing establishment supervisor, T.F., acknowledged that appellant was injured in the performance of duty and that her knowledge of the facts about the injury agreed with the statements of the employee and/or witnesses. Appellant stopped work on December 2, 2022.

In support of his claim, appellant submitted December 2, 2022 progress notes and urgent care notes from Lansdale Peters, a physician assistant, noting that he presented with moderately severe low back pain radiating down his left leg that began after lifting a heavy object at work that day. Mr. Peters assessed left-side sciatica, prescribed medication, and provided sciatica care instructions. In a work status report of even date, he held appellant off work and returned him to full-duty work on December 6, 2022.

In December 21, 2022 progress and visit notes, Dr. Tanvir Mahtab, an occupational medicine specialist, noted that appellant worked in a prison facility and was injured on December 2, 2022 when he lifted a heavy box of books and developed back pain in his left lower back that radiated down his left leg. He related that appellant had prior low back pain but no prior low back injuries. Dr. Mahtab diagnosed low back injury and lumbar radiculopathy and indicated that his findings and diagnoses were consistent with appellant's account of injury or onset of illness. In a work status report of even date, he held appellant off work through December 26, 2022 and placed him on modified activity from December 27, 2022 through January 10, 2023.

In a December 23, 2022 attending physician's report (Form CA-20), Dr. Mahtab noted a December 2, 2022 date of injury and diagnosed a low back injury and lumbar radiculopathy. He related that appellant developed left lower back pain that radiated down his leg after lifting a heavy box of books. Dr. Mahtab checked a box marked "No" indicating that the condition was not caused or aggravated by the described injury. He returned appellant to light-duty work on December 27, 2022 and provided work restrictions.

In a January 10, 2023 visit note, Dr. Mahtab reiterated his previous diagnoses and noted that appellant reported difficulty walking and that his pain was persistent. In a work status report of even date, he provided work restrictions from January 10 to 31, 2023.

In a January 20, 2023 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 factual questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Thereafter, appellant submitted January 10, 2023 progress notes from Dr. Mahtab reiterating his previous findings and diagnoses.

In a January 31, 2023 work status report, Dr. Mahtab provided work restrictions through February 14, 2023.

A February 2, 2023 magnetic resonance imaging (MRI) scan report of appellant's lumbar spine noted an impression of left paracentral disc extrusion at L5-S1 with possible impingement of the left S1 nerve root in the lateral recess and mild spinal canal stenosis.

A February 14, 2023 work status report from Dr. Mahtab provided work restrictions through March 10, 2023.

By decision dated February 22, 2023, 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.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ 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,⁵ 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.⁶ 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.⁷

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.⁸

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,

⁴ *Supra* note 1.

⁵ *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).

⁶ *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).

⁷ *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).

⁸ *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).

continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on the employee's statements in determining whether a *prima facie* case has been established.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on December 2, 2022, as alleged.

In his December 6, 2022 Form CA-1, appellant alleged that on December 2, 2022 he developed intense back pain when lifting books that limited his mobility. The claim form included the name of a witness, C.G., and on the reverse side of the claim form an employing establishment supervisor acknowledged that appellant was injured in the performance of duty and that her knowledge of the facts about the injury agreed with the statements of the employee and/or witnesses. 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

Further, the medical evidence contemporaneous with the alleged employment incident establishes that appellant sought medical treatment on December 2, 2022, the alleged date of injury, and reported to Mr. Peters that he developed moderately severe back pain after lifting a heavy object at work that day. On December 21, 2022 appellant related to Dr. Mahtab that he developed low back pain after lifting a heavy box of books on December 2, 2022. There are no inconsistencies in the evidence that cast serious doubt upon the validity of the claim, thus, the Board finds that appellant has established a traumatic incident in the performance of duty on December 2, 2022, as alleged.

As appellant has established that an incident occurred in the performance of duty on December 2, 2022 as alleged, the question becomes whether the incident caused an injury.¹² 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.¹³ 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 December 2, 2022 employment incident.

⁹ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

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

¹¹ *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).

¹² *D.F.*, *id.*; *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹³ *D.F.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic injury occurred in the performance of duty on December 2, 2022, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the February 22, 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: September 20, 2023
Washington, DC

Alec J. Koromilas, 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