

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

_____)
D.F., Appellant)

and)

U.S. POSTAL SERVICE, ANSON JONES POST)
OFFICE, Houston, TX, Employer)
_____)

Docket No. 24-0073
Issued: April 2, 2024

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

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On November 3, 2023 appellant filed a timely appeal from a September 20, 2023 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish an injury in the performance of duty, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 20, 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 additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On July 13, 2023 appellant, then a 40-year-old city carrier assistant, filed an occupational disease claim (Form CA-2) alleging that she developed pain in both hands, numbness, swelling, and stiffness due to factors of her federal employment including continuous use and movement of her hands. She noted that she first became aware of her condition and realized its relation to her federal employment on July 13, 2023.³

In an undated statement received on July 14, 2023, appellant reported that she developed pain in both hands and arms, numbness, swelling, and stiffness due to factors of her federal employment. She explained that the constant use of both hands, including opening, closing, simple grasping motions, lifting, and carrying objects on a regular basis caused pain and swelling. Appellant noted that this began in January 2023 and that she thought she could handle the swelling and the pain. She maintained that her condition progressively worsened since that time.

In a July 17, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her as to the type of factual and medical evidence required and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In an April 27, 2023, letter received on July 18, 2023, the employing establishment asserted that appellant's claim appeared to be for an occupational disease, rather than for a traumatic injury, as her statement alleged that the injury developed over time.

In a July 26, 2023 attending physician's report (Form CA-20), Dr. Robert C. Lowry, a physiatrist, diagnosed bilateral tenosynovitis of the forearm and hand, bilateral trigger finger, and traumatic osteoarthritis of the hands as a result of overuse from appellant's repetitive employment duties. He checked a box marked "Yes" indicating that the diagnosed conditions were caused or aggravated by the employment activity.

In a July 26, 2023 work capacity evaluation (Form OWCP-5c), Dr. Lowry provided light-duty work restrictions finding that appellant was unable to perform repetitive activities due to bilateral trigger finger.

In a July 26, 2023 narrative report, Dr. Lowry discussed appellant's history of injury and repetitive employment duties as a postal carrier. He diagnosed bilateral forearm/hand tenosynovitis, bilateral trigger finger of multiple digits, and bilateral hand osteoarthritis. Dr. Lowry opined that appellant's injuries were causally related to her repetitive employment duties as a city carrier assistant for the employing establishment. He found that appellant's repetitive gripping of bins to sort mail, fingering mail during delivery, gripping a steering wheel while driving, and lifting and carrying packages and mail throughout her workday, while still

³ The record reflects that on July 13, 2023 appellant also filed a traumatic injury claim (Form CA-1) alleging that on July 12, 2023 she developed bilateral hand pain and numbness, which started around January 2023 when carrying mail, constantly gripping, lifting, grabbing, holding, and carrying items while in the performance of duty. She asserted these activities caused extreme pain and locking in her hands. On the reverse side of the claim form, the employing establishment controverted continuation of pay, contending that her claim was not a traumatic injury.

recovering from a previous injury, caused tenosynovitis in both forearms/hands and triggering and arthritis in both hands.

In narrative reports dated July 28 through September 6, 2023, Dr. Lowry documented appellant's ongoing treatment with no significant change in her condition.

In an August 18, 2023 development letter, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor regarding appellant's claim. It afforded the employing establishment 30 days to provide the necessary information.

In an August 23, 2023 Form OWCP-5c and September 6, 2023 duty status report (Form CA-17), Dr. Lowry provided light-duty work restrictions, finding that appellant was unable to perform repetitive activities due to bilateral trigger finger.

By decision dated September 20, 2023, OWCP denied appellant's occupational disease claim, finding that she had not established the implicated factors of her federal employment. Consequently, it concluded that the requirements had not been met 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 establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation

⁴ *Supra* note 1.

⁵ *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).

⁶ *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).

⁷ *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).

is claimed; and (3) rationalized medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁸

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.⁹ 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.¹⁰ 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.¹¹

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that the employment factors occurred in the performance of duty, as alleged.

Appellant filed a Form CA-2 alleging that she developed bilateral hand conditions from engaging in continuous hand motions while performing the duties of her federal employment. She submitted a statement on July 14, 2023 explaining that she developed bilateral hand and arm pain, numbness, swelling, and stiffness due to factors of her federal employment. Appellant explained that the constant use of both hands, including opening, closing, simple grasping motions, lifting, and carrying objects on a regular basis caused pain and swelling. She advised that these activities caused extreme pain since January 2023 and progressively worsened since that time. Thereafter, appellant submitted Dr. Lowry's reports dated July 26 through September 6, 2023, wherein he documented bilateral hand injuries from repetitive overuse work activities involving gripping, grasping, fine manipulation, pushing, pulling, lifting, and carrying/manipulating medium to heavy loads in her employment as a city carrier assistant.

⁸ *T.M.*, Docket No. 20-0712 (issued November 10, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹⁰ *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).

¹¹ *See K.H., id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

As there are no inconsistencies sufficient to cast serious doubt on the type of duties appellant alleged that she performed,¹² the Board finds that she has established the implicated factors of her federal employment.¹³

As appellant has established that the employment factors occurred in the performance of duty, as alleged, the question becomes whether the employment factors caused an injury.¹⁴ Because OWCP found that she had not established fact of injury, it did not evaluate the medical evidence of record. Therefore, the case shall be remanded to OWCP to determine whether appellant sustained an injury causally related to the accepted factors of her federal employment.¹⁵ Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision on her occupational disease claim.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that the employment factors occurred in the performance duty, as alleged.

¹² *F.S.*, Docket No. 21-1040 (issued March 10, 2023); *I.J.*, Docket No. 20-0599 (issued November 22, 2022); *R.L.*, Docket No. 20-1616 (issued February 11, 2022).

¹³ *Id.*

¹⁴ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁵ *I.J.*, *supra* note 12; *T.M.*, Docket No. 20-0712 (issued November 10, 2020).

ORDER

IT IS HEREBY ORDERED THAT the September 20, 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: April 2, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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