

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

A.N. (<i>a.k.a.</i> A.S.), Appellant)	
)	
and)	Docket No. 22-0194
)	Issued: February 20, 2024
U.S. POSTAL SERVICE, WESTERVILLE)	
POST OFFICE, Westerville, OH, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On November 15, 2021 appellant filed a timely appeal from an October 29, 2021 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 his burden of proof to establish a traumatic injury in the performance of duty on September 11, 2021 as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the October 29, 2021 decision, appellant submitted additional evidence to OWCP and on appeal to the Board. 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 September 14, 2021 appellant, then a 39-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on September 11, 2021 he experienced pain in his back, which radiated into his legs and feet, when lifting and twisting while in the performance of duty. On the reverse side of the claim form, the employing establishment acknowledged that he was injured in the performance of duty. Appellant stopped work on September 13, 2021 and returned to work on September 17, 2021. OWCP assigned the claim OWCP File No. xxxxxx835.

In a September 22, 2021 development letter, OWCP notified appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a September 28, 2021 response to OWCP's development questionnaire, appellant explained that, while delivering a heavy package to a customer's front door, he felt mild pain in his upper back when he opened the back door of his postal truck, twisted to grab the package from the truck, and pulled it toward himself. He indicated that he heard a cracking noise when he lifted the package, and that his pain became progressively worse thereafter. Over time, when the pain became severe, appellant visited the emergency room on September 16, 2021 for treatment. At that time, he underwent diagnostic testing and received pain medication. Appellant also noted that he injured his lower back and neck in the previous fall.³

In a note dated September 16, 2021, Jennifer Leasure, a registered nurse, advised that appellant reported that "[appellant] was injured at work and he has back pain from lifting and twisting." In a report of the same date, Elizabeth Spears, a nurse practitioner, indicated that he reported that he was at work when "he lifted an object and twisted down" and was now experiencing paraspinal pain radiating down his legs. She reported physical examination and diagnostic testing results, and advised that appellant likely had a back strain. Results from September 16, 2021 x-rays of the cervical, thoracic, and lumbar regions of the spine were provided.

By decision dated October 29, 2021, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the September 11, 2021 employment incident occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable

³ Appellant filed an additional Form CA-1 on September 23, 2021 alleging that on September 25, 2020 he experienced pain in his neck, shoulders, and hands when casing and lifting mail while in the performance of duty. OWCP assigned this claim OWCP File No. xxxxxx363. By decision dated November 5, 2021, it denied the claim. Appellant's claim files have not been administratively combined by OWCP.

time limitation of FECA,⁴ 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.⁵ 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.⁶

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 an injury.⁷

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.⁸ 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.⁹ 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.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that an employment incident occurred in the performance of duty on September 11, 2021 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

⁴ See *D.T.*, Docket No. 22-1156 (issued April 24, 2023); *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).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *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).

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

⁹ *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).

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

persuasive evidence.¹¹ Appellant alleged that on September 11, 2021 he injured his back, with pain radiating into his legs and feet, when he twisted his body and lifted a heavy package while on his mail delivery route. He initially indicated that he injured himself on that date by lifting and twisting, but he later provided further details by explaining that he felt pain in his back when he opened the back door of his postal truck, twisted to grab the package from the truck, and pulled it toward himself. Appellant advised that he heard a cracking noise when he lifted the package. He reported the claimed September 11, 2021 injury to his supervisor on the following day, stopped work on September 13, 2021, and filed a Form CA-1 on September 14, 2021. Appellant consistently described the September 11, 2021 incident and sought medical attention several days after it occurred. He explained that he did not seek medical attention until September 16, 2021 because initially his pain was not severe, but later became progressively worse. On the reverse side of the claim form, the employing establishment acknowledged that appellant was injured in the performance of duty.

In a note dated September 16, 2021, Ms. Leasure, a registered nurse, advised that appellant reported that “[appellant] was injured at work and he has back pain from lifting and twisting.” In a report of the same date, Ms. Spears, a nurse practitioner, indicated that he reported that he was at work when “[appellant] lifted an object and twisted down” and was now experiencing paraspinal pain radiating down his legs. The injuries appellant claimed, and the initial medical treatment received, are all consistent with the facts and circumstances he set forth in his Form CA-1.¹²

There are no inconsistencies in the evidence that cast serious doubt upon the validity of the claim; therefore, the Board finds that appellant has established a traumatic incident in the performance of duty on September 11, 2021 as alleged.¹³

As appellant has established that the September 11, 2021 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁴ Because 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.¹⁵ 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 September 11, 2021 employment incident.¹⁶

¹¹ *Id.*

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

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

¹⁴ See *L.O.*, Docket No. 20-0280 (issued October 1, 2021).

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

¹⁶ On remand, OWCP may consider administratively combining OWCP File Nos. xxxxxx835 and xxxxxx363.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that an employment incident occurred in the performance of duty on September 11, 2021 as alleged.

ORDER

IT IS HEREBY ORDERED THAT the October 29, 2021 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 20, 2024
Washington, DC

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

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

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