

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

C.T., Appellant)

and)

U.S. POSTAL SERVICE, NORTH TEXAS)
PROCESSING & DISTRIBUTION CENTER,)
Coppell, TX, Employer)
-----)

Docket No. 23-0381
Issued: February 28, 2024

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
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On January 23, 2023 appellant filed a timely appeal from a December 29, 2022 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 a traumatic injury in the performance of duty on October 12, 2022, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that following the December 29, 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.*

FACTUAL HISTORY

On November 14, 2022 appellant, then a 52-year-old manager, filed a traumatic injury claim (Form CA-1) alleging that on October 12, 2022 she experienced lower back pain and pain in her legs when she bent over to get a package while in the performance of duty. She stopped work on October 13, 2022 and returned on October 17, 2022.³

In a letter dated November 17, 2022, the employing establishment controverted appellant's claim, contending that she had not established that her diagnosed degenerative lumbar disease was causally related to the October 12, 2022 employment incident. It noted that the evidence of record had established that appellant had previously filed an occupational disease claim (Form CA-2) for the same injury. The employing establishment asserted that appellant had a history of filing OWCP claims which have been closed with all benefits paid and/or denied and included a list of claims.

In a separate letter dated November 17, 2022, the employing establishment further contended that appellant had not established that the October 12, 2022 employment incident occurred as alleged. It asserted that appellant could not clearly describe when, where, or how the incident occurred. OWCP also noted that appellant had provided inconsistent accounts of when and where the injury occurred, and that there was a lack of confirmation of injury.

In a November 21, 2022 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In a November 28, 2022 response, appellant explained that her clock rings on October 12, 2022 showed that she had cased, split, and pulled down a different route before she started her route. She alleged that she had already been bending over and retrieving packages, and when she bent over to get another package, she felt pain in her back. Appellant also noted that when she returned to work on October 17, 2022, she informed her supervisor that she was injured.

In a separate November 28, 2022 response, appellant explained that she believed that she was supposed to file a Form CA-2 for her current claim, because she had a previous back injury at the beginning of her career. However, after further research and speaking with her claims examiner, she realized that the claim should be a Form CA-1. Appellant clarified that it was a single incident of her retrieving a package that caused her lower back pain, and not an aggravation of a previous back injury. She described that on October 12, 2022, she bent over to retrieve a package and when she stood, she felt extreme pain in her lower back. Appellant noted that she was not able to sit or move, and that K.B., a coworker, and T.D., a supervisor, assisted in moving her. She indicated that T.D. called her daughter who picked her up and took her to the emergency department. Appellant clarified that her injury was caused by a single incident, when she retrieved

³ OWCP assigned the present claim OWCP File No. xxxxxx543. Appellant also has a prior occupational disease claim (Form CA-2), filed on October 13, 2022, alleging that she sustained back pain radiating into her leg due to bending over to retrieve a package as of October 12, 2022. OWCP assigned that claim OWCP File No. xxxxxx277 and accepted it for other intervertebral disc displacement, lumbar region and fusion of the spine, lumbar region. Appellant's claims have not been administratively combined.

a package from a security cage. She requested that OWCP close the Form CA-2 claim and proceed with the Form CA-1 claim.

OWCP received a November 9, 2022 lumbar spine magnetic resonance imaging (MRI) scan, which noted disc protrusions at L3-4, L4-5, and L5-S1.

In a narrative report dated November 17, 2022, Dr. Neil J. Atlin, an osteopathic physician Board-certified in anesthesiology and pain management, described that on October 12, 2022 appellant was bending over to retrieve a package when she “locked up.” He related that, later that evening, appellant complained of severe pain radiating down both legs and sought treatment at the emergency room. Dr. Atlin discussed the findings of appellant’s lumbar spine MRI scan and conducted an examination. He diagnosed conditions, including subacute myofascial pain syndrome with herniated disc and extrusion of L4-5, with persistent left lumbar radiculopathy (severe) following work injury, and secondary myofascial pain syndrome of the thoracolumbar spine.

By decision dated December 29, 2022, OWCP denied appellant’s claim, finding that the evidence of record was insufficient to establish that the October 12, 2022 employment incident occurred, as alleged. Therefore, 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 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

⁴ *Supra* note 1.

⁵ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *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); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.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.⁹ The employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to 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 statement in determining whether a *prima facie* case has been established.¹⁰ 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.¹¹

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 October 12, 2022, as alleged.

On her November 14, 2022 Form CA-1, appellant described that on October 12, 2022 she experienced lower back and leg pain when she bent over to retrieve a package while in the performance of duty. In response to OWCP's November 21, 2022 development letter, she clarified that it was a single incident of her retrieving a package that caused her lower back pain. In addition, in a November 17, 2022 narrative report, Dr. Atlin related that on October 12, 2022 appellant was bending over to retrieve a package when she "locked up" and experienced severe back pain later that evening. As noted, 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.¹² Appellant has consistently stated that her injury occurred on October 12, 2022 when she bent over to retrieve a package and felt lower back pain while working.¹³ There is no evidence of record that casts serious doubt on appellant's account of the October 12, 2022 incident. Therefore, the Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on October 12, 2022, as alleged.¹⁴

⁸ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

⁹ *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

¹⁰ *C.M.*, Docket No. 20-1519 (issued March 22, 2019); *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

¹² *Id.*

¹³ *See C.F.*, Docket No. 23-0290 (issued July 12, 2023).

¹⁴ *See J.V.*, Docket No. 21-0029 (issued April 15, 2022); *C.B.*, Docket No. 21-0670 (issued January 27, 2022).

As appellant has established that the October 12, 2022 incident occurred in the performance of duty as alleged, the question becomes whether the incident caused an injury.¹⁵ 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.¹⁶ Following 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 October 12, 2022 employment incident.¹⁷

CONCLUSION

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on October 12, 2022, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the December 29, 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: February 28, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

¹⁵ *C.B.*, Docket No. 21-0554 (issued June 21, 2022); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁶ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹⁷ On return of the case record, OWCP may consider administratively combining OWCP File Nos. xxxxxx543 and xxxxxx277. See Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance and Management*, Chapter 2.400.8c (February 2000).