

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

P.S., Appellant)	
)	
and)	Docket No. 23-0822
)	Issued: January 23, 2024
U.S. POSTAL SERVICE, POST OFFICE,)	
Greensboro, NC, 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
JANICE B. ASKIN, Judge

JURISDICTION

On May 22, 2023 appellant filed a timely appeal from a February 24, 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

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). In support of appellant's oral argument request, he asserted that oral argument is necessary for his claim to be approved. The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

ISSUE

The issue is whether appellant has met his burden of proof to establish an injury in the performance of duty on December 19, 2022, as alleged.

FACTUAL HISTORY

On January 1, 2023 appellant, then a 57-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on December 19, 2022 he twisted his left ankle and fell to the ground when delivering mail while in the performance of duty. On the reverse side of the claim form, his supervisor, B.B., acknowledged that he was in the performance of duty when injured. However, she noted that her knowledge of the facts about the injury did not agree with appellant's statements, as she had not received any medical documentation. B.B. also noted that he had previously called-out during a holiday, and she believed that he had a preexisting diagnosis of fasciitis in the left foot. Appellant stopped work on December 20, 2022 and returned to work without restrictions on December 27, 2022.

In a December 20, 2022 work slip, Sallie Corse, a physician assistant, recommended that appellant remain off work until December 27, 2022.

In a January 12, 2023 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP thereafter received a December 20, 2022 report by Ms. Course, who noted that appellant related complaints of left ankle pain and swelling, which he attributed to an injury on December 19, 2022. She recounted that he indicated that he walked on a customer's yard to deliver mail and stepped on uneven grass, which caused him to twist his left ankle. Ms. Course noted a history of plantar fascial fibromatosis and performed a physical examination, which revealed swelling of the left ankle, tenderness, reduced range of motion, and a positive inversion stress test. She indicated that x-rays did not reveal any apparent fractures. Ms. Course diagnosed pain in the left ankle joint.

By decision dated February 24, 2023, OWCP denied appellant's traumatic injury claim, finding that he had not submitted sufficient evidence to establish that the events 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 FECA³ 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

³ *Id.*

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. There are two components involved in establishing fact of injury. The first component is whether the employee 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.⁷

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.⁸ In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on the employee's statements. 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.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 a traumatic incident occurred in the performance of duty on December 19, 2022, as alleged.

In his January 1, 2023 Form CA-1, appellant indicated that on December 19, 2022 he twisted and injured his left ankle while delivering mail. His supervisor, B.B., acknowledged on the reverse side of the claim form that he was injured in the performance of duty on December 19, 2022. In a December 20, 2022 report, Ms. Course, a physician assistant, noted that

⁴ *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 *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).

⁶ *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).

⁷ *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).

⁸ *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

⁹ *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *Betty J. Smith*, 54 ECAB 174 (2002).

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

appellant described an incident on December 19, 2022, wherein he stepped on uneven grass while delivering mail and twisted his left ankle.

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.¹¹ Appellant has maintained that his injury occurred when he twisted his ankle while delivering mail on December 19, 2022, which was acknowledged by his supervisor. Ms. Course then related this same description of the incident in her December 20, 2022 report. Therefore, the Board finds that he has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on December 19, 2022, as alleged.

As appellant has established that an incident occurred in the performance of duty on December 19, 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 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 19, 2022 employment incident, and any attendant disability.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on December 19, 2022, as alleged.

¹¹ *Id.*

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 *Supra* note 9; *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

ORDER

IT IS HEREBY ORDERED THAT the February 24, 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: January 23, 2024
Washington, DC

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

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board