

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on February 16, 2024, as alleged.

FACTUAL HISTORY

On February 27, 2024, appellant, then a 55-year-old mail processing clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 16, 2024 at 11:00 p.m., she sustained injuries to her neck, back, ankles, hips, knees, left wrist, left arm, and left shoulder, as well as bruising, swelling, numbness, tingling, headaches and pain throughout her body while in the performance of duty. Appellant alleged that she was assaulted by H.L., a supervisor of distribution operations (SDO), who lunged at her twice using his entire body weight, while J.H., another SDO, sat by and “allowed the assault to happen.” On the reverse side of the claim form, A.B., a manager of distribution operations, and A.P., appellant’s supervisor, contended that appellant was not in the performance of duty when injured.

In an undated statement, appellant related that at 11:00 p.m. on February 16, 2024 J.H. asked her to come to the first-floor supervisory distribution office to sign light-duty paperwork. When in the office, she reviewed the modified job assignment. Appellant informed J.H. that the modified job offer was incorrect and refused to sign the offer. She also requested a copy of the modified job offer to provide to a union steward. Appellant indicated that H.L. told her that she had to sign the modified job offer and denied her request for a union steward. She again requested a copy of the modified job offer but H.L. refused her request. Appellant alleged that she had a right to have a copy and “took the paper [and] attempted to walk out of the office.” H.L. jumped up and lunged at her, throwing his body weight onto her left side. Appellant alleged that H.L. crushed her left wrist, which was scheduled for carpal tunnel syndrome surgery on February 26, 2023.³ She again requested a union steward, but H.L. refused her request. Appellant maintained that J.H. watched the assault unfold without attempting to protect her or deescalate the situation. She asked H.L. if he was trying to prevent her from leaving the office and he informed her that she could not take the modified job offer with her. Appellant related that she took a picture of page one of the modified job offer with her cellphone and, as she was attempting to take a picture of the second page, H.L. “lunged at [her] again, throwing his body on [her], crushed [her] wrist, almost knocking [her] down to the ground/floor.” She alleged that “H.L. “stood, and/or step[p]ed back blocking the door to the office again so [she] could not get out of the office.” Appellant informed him that he could not prevent her from leaving, that she was entitled to a copy of the job offer, that he had assaulted her, and that she was telephoning the police. She indicated that J.H. denied that H.L. had assaulted her and advised that he was trying to get the paper that appellant had taken from J.H. Appellant related that it was possible that she had taken the paper out of J.H.’s hand as she had no memory of returning the paper to J.H. She asserted that she threw the paper on the desk and, after H.L. moved, walked out of the office while on the telephone with the police. Appellant also spoke with J.W., the union steward, who confirmed that she had a right to the copy of the modified job assignment. She advised that she had felt threatened and did not

³ Under OWCP File No. xxxxx156, appellant has an accepted occupational disease claim (Form CA-2) for bilateral carpal tunnel syndrome and lesion of left ulnar nerve. OWCP has not administratively combined appellant’s claims.

know if she would make it “out of the office safely.” Appellant also reported being in shock and feeling pain in her chest and wrist. She indicated that she had a panic attack. On February 19, 2024 appellant returned to work and filed a grievance with her union. She indicated that she did not feel comfortable returning to work and reported pain “on the entire left side of my body.” Appellant sought treatment in the emergency department on February 19, 2024 due to pain and burning in her knee, hip and shoulder area. She indicated that following x-rays she was told that nothing was broken, only bruised, and that she could take over-the-counter pain medication but had to stop some of her medications seven days prior to her scheduled carpal tunnel surgery. Appellant reported waking up on February 20, 2024 with neck and back pain, inflammation of the upper middle and lower left side of her back, and swelling of the left ankle. She also noticed bruising near her upper left rib cage and under her breast area. On February 21, 2024 appellant alleged a headache, swollen ankles, and more body aches.

In a February 17, 2024 e-mail, J.H. stated that at approximately 11:00p.m. on February 16, 2024 she escorted appellant to the first floor SDO office for her to review job offer modification paperwork. H.L. was by his computer in the office when J.H. handed appellant her paperwork. Appellant did not agree with the job offer modification and handed the paperwork back to her. J.H. explained to appellant that she could either accept and sign it or decline it and provide an explanation. Appellant raised her voice and demanded that H.L. give her a copy. When J.H. told appellant that she could not give her a copy, appellant “aggressively snatched the paper” from her hand and “walked away the same time [A.G.] came in the office and saw everything.” J.H. related that H.L. “stood up, put his hand out, stopped [appellant] and tried to take the paper away from her, but [appellant] put off H.L.’s hand away. [Appellant] told H.L. to stop touching her and called the police.” J.H. indicated that appellant took a picture of the paperwork and left the office. A.G. wrote a statement but did not want to be identified as a witness. J.H. indicated that the police came in at 11:20 p.m. and conducted an investigation.

In a February 16, 2024 statement, A.G. indicated that when she went to the first floor SDO office at 11:05 p.m. H.L., J.H., and appellant were in an argument. A.G. related, “When asked to sign/initial papers, [appellant] then snatched the papers and attempted to run off with them. [H.L.] then stood to take the papers. [Appellant] demanded a union steward and attempted to call 9-1-1. No hands were put on each other.”

In an undated statement, H.L. related that around 11:00 p.m. on February 16, 2024, he was working on the computer in the first floor SDO office. J.H. explained to appellant the new duties of the modified assignment and asked her to sign if she accepted or denied the offer. After appellant read the form with the offered position, she handed it back to J.H., and loudly demanded a copy to give to the union. J.H. told her that she could not have the copy and appellant took the paper from J.H.’s hand and tried to walk out of the office. H.L. asserted that he stood with his hand out without touching appellant to try to stop her from taking the paper. He maintained that he told appellant in a polite way that she could not take the paper, but she slapped his hand and screamed that he had assaulted her. H.L. related, “[Appellant] again tried to leave with the paper, so I told her, please leave the paper but she slapped my hand again.” He indicated that appellant took pictures of the form with her telephone, left the office, and called 9-1-1. H.L. indicated that J.H. and A.G. had witnessed the event. He also noted that the police came around 11:20 p.m. and investigated.

In a development letter dated February 28, 2024, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion along with a copy of an attending physician's form report. OWCP afforded appellant 60 days to respond.

In a separate development letter also dated February 28, 2024, OWCP requested that the employing establishment provide additional factual information regarding the claimed February 16, 2024 employment incident, including any investigative reports and other witness statements, if available. It asked the employing establishment to explain if any physical contact took place which would have caused the reported injuries and whether it had any knowledge as to whether appellant had any similar disability or symptoms prior to the alleged injuries from the assault.

Thereafter, OWCP received a February 19, 2024 emergency room report from Dr. Wesley G. Zeger, an osteopath and Board-certified emergency medicine specialist, who obtained a history of appellant experiencing pain in her neck, back, and left side after an assault at work three days earlier. Dr. Zeger noted that she had a history of allergies, neuropathy and carpal tunnel, with carpal tunnel surgery planned for February 26, 2024. Appellant reported that while working, she was provided a document which she refused to sign. She indicated that her supervisor "lunged toward her and hit body with his body, hitting [her] left side, in an attempt to reach for the paper," and that she sustained two impacts. Appellant denied hitting any objects or being struck with any closed fists or objects. She experienced a gradual onset of pain. Appellant reported left knee pain which radiated to the hip, neck pain radiating down the center of the back, right arm pain, and mild shortness of breath was worsened by anxiety attacks. On examination Dr. Zegar noted mild soft tissue discomfort to palpation over left paraspinal muscles of left shoulder and decreased range of motion of the left knee secondary to discomfort. He found no visible deformities, lesions, swelling, or other signs of trauma and noted that x-rays of the left knee, cervical spine, chest, left hip and pelvis were negative. Dr. Zegar diagnosed acute left knee pain, left-sided chest wall pain, and left sided neck pain. He also indicated that he had discussed with appellant "likely soft tissue injuries from reported assault." A February 19, 2024 after-visit summary, noted that appellant was an assault victim with diagnoses of acute left knee pain, left-sided chest wall pain, and left sided neck pain. In a February 19, 2024 return-to-work note, Dr. Zeger opined that appellant could return to work on February 20, 2024 with lifting restrictions for the next four days to recover from muscle discomfort.

A February 23, 2024 police report indicated that on Friday, February 16, 2024 at approximately 11:50 p.m. two officers were dispatched to the employing establishment for an assault call. Appellant reported that she "got into a physical altercation with her supervisor and he had 'thrown himself' at her." She requested an ambulance as she felt she was having a panic attack. Appellant told the emergency medical technicians (EMT's) that "her supervisor had put his arm out to stop her from leaving the room and, when she tried to push back, he fell into her slightly, and it hurt her shoulder, which was already in pain due to an older injury she was about to have surgery on." The interviews with H.L. and J.H. revealed that they were both present during a meeting about [appellant] moving to light duty. J.H. had gone to the floor and asked appellant to come with her to the supervisor's office. Once there she provided appellant with the limited-duty paperwork, with which appellant disagreed. She requested a copy of the paperwork. J.H. advised that she would make a copy after appellant had signed the paperwork. Appellant and J.H.

argued and appellant attempted to leave the office. H.L. put his arm out informed appellant that she needed to leave the paperwork in the office. Appellant pushed H.L.'s arm away and "tried to walk out while throwing the paperwork on the desk." H.L. then called the police. The police report noted that no one wanted to press charges. It was further noted that appellant had asked the responding officers about the statements made because "They lie all the time."

In a February 28, 2024 statement, manager A.B. advised that the investigation determined that appellant's claims were not substantiated. She related that a "[p]olice report was taken but no party wanted to press charges at that time." A.B. denied that contact from H.L. would have caused the claimed injuries and advised that she had no knowledge of whether appellant had any similar disability. She noted that she was aware that appellant was in the process of being given a modified job assignment with lifting restrictions but denied any knowledge of the details for that injury.

In a March 14, 2024 response to OWCP's development questionnaire, appellant asserted that the witness statements from J.H., H.L., and A.G. were not true. She alleged that A.G. had not been in the office and that her statement was false. Appellant maintained that H.L. had made physical contact twice and that he had lunged at her with his full body on her left side. She alleged that the front of H.L. "landed on" the left side of her body, and that he would have head butted her if she did not lean to the right. Appellant indicated that she assumed that he was lunging for the paper that she was holding in her left hand and that she believed that he had purposely assaulted her. She alleged that H.L.'s feet had left the ground each time he lunged. Appellant related that the "impact felt as though he took a running start and charged at [her]." She denied falling, but believed her body "braced itself for the impact" and that the hit caused physical damage to her body "as though she was in a car accident." Appellant noted that she had leaned right and possibly stumbled. She denied initiating any contact with H.L. Appellant noted that she was waiting to hear from a detective to amend the police report. She identified A.B. as a witness, indicating that she had walked with her to the SDO's office and that she could attest to A.G. not being in the office. Appellant alleged that J.H. "lied to the police under oath, hindering the investigation" by failing to report H.L.'s physical contact and asserting that appellant had hit H.L. Appellant denied slapping H.L.'s hand explained that when she saw his arms blocking her exit she stepped back and did not run into any part of his body." She asserted that H.L. was not working on his computer as his screen was dark. Appellant also maintained that she had requested a copy of the job offer without being hostile or loud. She noted that A.G. related that neither party put hands on another even though H.L. and J.H. advised that she had slapped H.L.'s hand. Appellant attached a copy of the first page of the February 15, 2024 offer of modified assignment, a blurry picture of what appears to be an office floor, a hand drawn diagram of the SDO's office, and a March 14, 2024 list of concerns she wished to amend in the police report.

In an undated statement, A.B. indicated that on February 16, 2024 SDO J.H. called appellant into the first floor supervisory office to sign light-duty paperwork. J.H. walked off and appellant continued to throw the little bit of mail into her bags. They then walked to the SDO office together and arrived about 11:03 p.m., after which they talked for a bit and parted ways at 11:06 p.m. A.B. indicated that only J.H. and H.L. were in the office when appellant entered.

In a March 15, 2024 e-mail, H.M., an employing establishment manager, reported that A.B. had clocked out at 10:33 p.m. but remained on the workroom floor talking to appellant about her upcoming surgery. She noted that A.B. had walked with appellant to the first floor SDO office

and was there for three minutes from 11:03 p.m. to 11:06 p.m., and no one else was at the office during this time. H.M. reported that A.B. indicated that she knew what both times were because she had been on break and was continually checking her telephone for the time. She also reported that A.G. stated she went to the SDO office at 11:05 p.m., as she was unable to log into the application to view her clock rings. H.M. noted that A.G. saw H.L., J.H., and appellant inside the office, that she had waved her hand to get attention through the windows of the SDO office door, and that H.L. had noticed her but she did not know whether J.H. or appellant had seen her. She reported that A.G. advised that she was at the door waiting approximately five to six minutes.

In a March 16, 2024 response to H.M.'s e-mail, H.L. noted that normally A.G. would look for either him or J.H. on the floor or in the office around 11:00 p.m. to give them a rundown of her day. He indicated that, on the date in question, A.G. tried to open the door, but he waved at her to let her know not to come in because of the situation in the room. H.L. noted that the SDO office has windows all around so anyone can see inside. He related that he saw A.G. standing outside of the office but denied seeing A.B.

A February 26, 2024 operative report indicated that appellant underwent left carpal tunnel, cubital tunnel, and ulnar releases. Preoperative and postoperative reports and physical therapy reports related to the left arm surgery were also received.

In a March 6, 2024 attending physician's report (Form CA-20), a nurse practitioner reported the history of injury as appellant's supervisor lunging at her to grab a paper from her hand and hitting the left side of her body. She diagnosed assault, physical injury, and trapezius muscle spasm. The nurse practitioner also noted that appellant was partially disabled due to her right shoulder and indicated she could work with restrictions.

In a follow-up letter dated March 28, 2024, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the February 28, 2024 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In an April 15, 2024 report, Dr. Snowleopard C. Tyler, a resident physician, reported that he saw appellant to complete paperwork about a recent assault at work. He noted recent whole-body x-rays were normal and that she had no headache, dizziness or lightheadedness. Physical examination findings were normal.

In an April 16, 2024 report, Dr. Scott Vincent, a Board-certified family physician and vascular surgeon, reported that appellant had been working limited duty since a 2017 injury and had filed multiple grievances about the mishandling of her modified work assignments. He reported that on February 16, 2024, while meeting about a job offer, a supervisor tried to take the job offer from appellant and lunged at her, contacting her left side twice. Dr. Vincent noted that she experienced her worst pain beginning February 19, 2024 in the form of burning pain on the left side, especially the knees and hips. Appellant had continued pain in her legs, hips, upper back, neck and lower back and she "wakes up with swelling." Dr. Vincent found normal findings on examination. He diagnosed soft tissue injury to the cervical spine and left shoulder.

By decision dated May 10, 2024, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that the February 16, 2024 incident occurred in the performance of duty, as alleged. It found that the conflicting statements regarding whether H.L. made bodily contact with appellant or in such degree to cause the reported injuries cast serious doubt on the validity of the claim. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On May 21, 2024 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. A telephonic hearing was held on September 4, 2024.

By decision dated October 25, 2024, OWCP's hearing representative affirmed OWCP's May 10, 2024 decision.

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, 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 an injury.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. 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, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast serious doubt on the employee's statements

⁴ *Supra* note 2.

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 *B.H.*, Docket No. 20-0777 (issued October 21, 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).

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).

in determining whether a *prima facie* case has been established.⁸ 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.⁹

Verbal or physical altercations that occur because of disputes over work matters are covered as arising out of employment.¹⁰ There is no provision in FECA authorizing denial of compensation because the employee was an aggressor or initiator or otherwise did something imputing culpability on his or her part.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on February 16, 2024, as alleged.

In her Form CA-1 and March 14, 2024 statement, appellant alleged that H.L. lunged at her twice and made physical contact with his full body weight on her entire left side. She asserted that he would have butted her if she would not have leaned to the right both times. Appellant further related that his feet left the floor each time and that the impact felt as though he had taken a running start and charged at her. She alleged that her injuries occurred because she had braced herself for the impact and that she leaned to the right twice and may have stumbled. J.H., however, related that H.L. put his hand out to stop appellant from trying to take the paper after she pushed his hand away and told him to stop touching her. H.L. advised that he had his hand out to try to keep appellant from walking out of the office, but he did not touch appellant. A.G. verified that no hands were put on any person. OWCP's hearing representative found that the statements of H.L., J.H., and A.G. were credible and consistent with A.G.'s statement.

The Board finds that there are sufficient inconsistencies in the evidence of record to find that appellant has not established the occurrence of the claimed February 16, 2024 employment incident. Specifically, statements from witnesses and the supervisors accounts cast serious doubt on the validity of appellant's claim and overcome the probative value generally afforded to a claimant's statement of how she was injured.¹²

The Board notes there is no finding by a police agency or any investigative body that an assault took place as alleged. Furthermore, appellant offered varying statements regarding the alleged assault. She reported that H.L. lunged at her two times and made physical contact with his full body weight on her entire left side. Appellant also claimed that H.L.'s feet left the ground each time he lunged at her. However, the February 24, 2024 police report indicated that appellant

⁸ *T.T.*, Docket No. 22-0792 (issued October 18, 2022); *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁰ *D.P.*, Docket No. 08-1903 (issued April 15, 2009); *Allan B. Moses*, 42 ECAB 575 (1991).

¹¹ *Barry Himmelstein*, 42 ECAB 423 (1991); *Robert L. Williams*, 1 ECAB 80 (1948).

¹² See *SM.*, *id.*; *D.P.*, Docket No. 18-0190 (issued May 22, 2018).

told the EMT's that her supervisor had put his arm out to stop her from leaving the room and, when she tried to push back, he had fallen into her slightly, hurting her shoulder, which was already in pain due to an older injury for which surgery was scheduled.

The Board finds that the uniformity in the three witness statements corroborate that appellant was not assaulted by H.L. on February 16, 2024, which is further corroborated by no official finding by a police agency or any investigative body that an assault took place as alleged, and the fact that appellant, herself, offered varying statements regarding the alleged assault. Appellant has not provided evidence into the record to indicate that H.L., J.H., and A.G. were biased against her version of the incident. Additionally, there is no reason to discount their version of the incident. The Board finds that these statements cast serious doubt on the validity of appellant's claim.¹³

The Board thus finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on February 16, 2024, as alleged. Consequently, it is unnecessary to address the medical evidence of record.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on February 16, 2024, as alleged.

¹³ See *A.B.*, Docket No. 14-0522 (issued November 9, 2015).

¹⁴ See *M.P.*, Docket No. 15-0952 (issued July 23, 2015); *Alvin V. Gadd*, 57 ECAB 172 (2005).

ORDER

IT IS HEREBY ORDERED THAT the October 25, 2024 merit decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 3, 2025
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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