

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

M.S., Appellant	)	
	)	
and	)	Docket No. 21-0600
	)	Issued: August 31, 2021
U.S. POSTAL SERVICE, POST OFFICE,	)	
Des Moines, IA, 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, Alternate Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 8, 2021 appellant filed a timely appeal from a February 19, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUE**

The issue is whether appellant has met his burden of proof to establish that a traumatic incident occurred in the performance of duty on December 16, 2020, as alleged.

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that, following the February 19, 2021 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 January 5, 2021 appellant, then a 39-year-old rural carrier associate filed a traumatic injury claim (Form CA-1) alleging that on December 16, 2020 he cracked his ribs when he lost control of his vehicle on an icy road and was involved in a motor vehicle accident while in the performance of duty. On the reverse side of the claim form appellant's supervisor, E.M., acknowledged that appellant was injured while in the performance of duty and noted that his knowledge of the facts about the injury conformed with appellant's statements. Appellant stopped work and sought medical treatment on the alleged date of injury.

In a continuation of pay (COP) nurse report dated January 11, 2021, Cynthia Coleman, a registered nurse, indicated that appellant stopped work on December 16, 2020 after he was involved in a work-related motor vehicle accident and was medically treated. Ms. Coleman contacted him by telephone and was informed that he continued to have pain in the right rib area and indicated that he could not move his right arm. Appellant reported not being able to work due to pain and also because he did not have a car due to his motor vehicle accident. Ms. Coleman communicated with appellant's supervisor, E.M. on January 7, 2021 who noted that appellant was released to work on December 23, 2020 pursuant to the medical records received, but had car issues since appellant's work vehicle was damaged in the motor vehicle accident. She noted that the COP case would be closed as appellant had not returned to work.

In a development letter dated January 14, 2021, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information. No response was received.

By decision dated February 19, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as he described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

## **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> 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 time limitation period of FECA,<sup>4</sup> 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.<sup>5</sup> These are the essential elements of each and every

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.<sup>7</sup>

Fact of injury consists of two components that must be considered in conjunction with one another. 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.<sup>8</sup> Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.<sup>9</sup>

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.<sup>10</sup> The employee has not met his or her burden of proof in establishing the occurrence of an injury when there are inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.<sup>11</sup> 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. 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.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic employment incident occurred in the performance of duty on December 16, 2020, as alleged.

The record establishes that on December 16, 2020 appellant lost control of his vehicle on an icy road and had a motor vehicle accident while in the performance of duty. He reported sustaining a rib injury. Appellant's supervisor, E.M., acknowledged on the Form CA-1 that appellant's injury occurred in the performance of duty and that his knowledge of the facts about this injury conformed with the statements of the employee. Additionally, in a COP nurse report

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<sup>6</sup> *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *E.M.*, Docket No. 18-1599 (issued March 7, 2019).

<sup>8</sup> *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>10</sup> *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

<sup>11</sup> *See V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

<sup>12</sup> *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

dated January 11, 2021, Ms. Coleman, the interventional nurse, noted that appellant stopped work on December 16, 2020 after he was involved in a motor vehicle accident at work and was medically treated. Appellant reported continued pain in the right rib area and indicated that he could not move his right arm. Ms. Coleman reported communicating with appellant's supervisor, E.M., on January 7, 2021 who noted that appellant was released to work on December 23, 2020 pursuant to the medical records received, but appellant had car issues since his work vehicle was damaged in the accident.

The injuries appellant claimed are consistent with the facts and circumstances he set forth, statements from supervisor, and his course of action. As noted above, the 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.<sup>13</sup> 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.<sup>14</sup> The Board thus finds that appellant has met his burden of proof to establish that the December 16, 2020 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the December 16, 2020 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.<sup>15</sup> As OWCP found that he had not established an employment incident, the case will be remanded for OWCP to determine whether appellant sustained an injury causally related to the accepted employment incident. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision.

### CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the December 16, 2020 employment incident occurred in the performance of duty, as alleged. The Board further finds that the case is not in posture for decision regarding whether appellant sustained an injury causally related to the accepted employment incident.

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<sup>13</sup> *Supra* note 10.

<sup>14</sup> *See supra* note 12.

<sup>15</sup> *See M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

**ORDER**

**IT IS HEREBY ORDERED THAT** the February 19, 2021 decision of the Office of Workers' Compensation Programs is reversed in part and set aside in part. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 31, 2021  
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

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