

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

R.D., Appellant)	
)	
and)	Docket No. 21-0539
)	Issued: September 3, 2021
U.S. POSTAL SERVICE, POST OFFICE,)	
Richmond, VA, 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
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On February 25, 2021 appellant filed a timely appeal from a December 2, 2020 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 the case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on October 3, 2020, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the December 2, 2020 decision, OWCP received additional evidence. 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 October 6, 2020 appellant, then a 56-year-old rural carrier associate, filed a traumatic injury claim (Form CA-1) alleging that on October 3, 2020 she injured her right knee when stepping out of her mail truck onto grass, while in the performance of duty. She recounted that her right knee buckled, and she heard a pop. Appellant stopped work on October 3, 2020. On the reverse side of the claim form, appellant's supervisor, T.B., indicated, by checking a box marked "Yes" that appellant was in the performance of duty when injured. She also checked a box marked "Yes" that the injury resulted from "intent to injure self or another." T.B. explained that appellant stated that she jumped out of her mail truck and caused injury to herself.

In a development letter dated October 27, 2020, OWCP advised appellant that additional evidence was necessary to establish her claim. It advised 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 response, appellant submitted a medical report dated October 3, 2020 from Dr. Timothy D. Weber, Board-certified in emergency medicine. Dr. Weber diagnosed a knee sprain.

Appellant submitted an evaluation dated October 21, 2020 with an illegible signature which listed her work restrictions.

In an attending physician's report (Form CA-20) dated November 10, 2020, Dr. John Kim, an internist, noted appellant's history of injury that on October 3, 2020 her right leg gave out as she exited her work vehicle. He diagnosed right knee sprain.

By decision dated December 2, 2020, OWCP denied appellant's claim as she had not established that the incident occurred as alleged. 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 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 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

³ *Supra* note 1.

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).

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 that 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. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.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 of establishing 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 statements in determining whether a case has been established. 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

ANALYSIS

The Board finds that appellant has met her burden of proof to establish that a traumatic employment incident occurred in the performance of duty on October 3, 2020, as alleged.

As noted, an employee's statement alleging that an incident occurred at a given time and place, and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰ Appellant alleged that she sustained a right knee injury on October 3, 2020 when she stepped out of her mail truck. Additionally, she sought medical care the same day and Dr. Weber diagnosed a right knee sprain. Dr. Kim also recorded the same history of injury.

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 *See J.M.*, Docket No. 19-1024 (issued October 18, 2019); *M.F.*, Docket No. 18-1162 (issued April 9, 2019).

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

¹⁰ *See id.*

Appellant's allegations that she sustained a right knee injury on October 3, 2020 as she stepped out of her employing establishment vehicle onto grass are consistent with the facts and circumstances she set forth, her actions, and the medical evidence she submitted. Moreover, on the reverse side of the claim form, appellant's supervisor, T.B., indicated, by checking a box marked "Yes" that appellant was in the performance of duty when injured. The Board thus finds that she has met her burden of proof to establish an employment incident in the performance of duty on October 3, 2020, as alleged.

As appellant has established that the October 3, 2020 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹¹ As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence. The Board, therefore, will set aside OWCP's December 2, 2020 decision and remand the case for consideration of the medical evidence of record.¹² After 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 3, 2020 employment incident.

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 August 3, 2020, as alleged. The Board further finds that the case is not in posture for decision regarding whether she has sustained an injury causally related to the accepted August 3, 2020 employment incident.

¹¹ See *M.H.*, Docket No. 20-0576 (issued August 6, 2020); *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹² *M.H.*, *id.*; *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the December 2, 2020 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: September 3, 2021
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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