

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

H.P., Appellant)	
)	
and)	Docket No. 23-0269
)	Issued: August 9, 2023
U.S. POSTAL SERVICE, DONELSON POST)	
OFFICE, Nashville, TN, Employer)	
)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On December 18, 2022 appellant filed a timely appeal from a December 9, 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.

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on June 27, 2022, as alleged.

FACTUAL HISTORY

On July 4, 2022 appellant, then a 39-year-old mail carrier, filed a traumatic injury claim (Form CA-1) alleging that on June 27, 2022 he sustained a low back injury when lifting a bucket while in the performance of duty. On the reverse side of the claim form appellant's manager,

¹ 5 U.S.C. § 8101 *et seq.*

L.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 on June 27, 2022 and returned on July 5, 2022.

An x-ray of the lumbar spine dated September 25, 2018 revealed no abnormalities.

On June 27, 2022 Robert Relic, a physician assistant, treated appellant for a sudden onset of bilateral low back pain that occurred at work when appellant lifted a bucket and heard a "pop" in his back. He noted findings on examination of tenderness to palpation in the left paraspinal at L4-5 and right paraspinal at L4-5, bilateral muscle spasms, and painful range of motion in all planes. Mr. Relic noted no significant radiologic findings and diagnosed lumbar strain. He returned appellant to modified-duty work and referred him for physical therapy. Mr. Relic treated appellant in follow-up visits on June 29 and July 7, 18, and 27, 2022 for low back strain and reported a slight improvement in low back pain with physical therapy and work restrictions. He noted continuing symptoms of bilateral and midline lower back pain radiating into the right buttock. Mr. Relic diagnosed lumbar strain and continued modified duty. In an August 9, 2022 report, appellant noted improving symptoms and indicated that he was able to walk and lift more items. Mr. Relic opined that appellant reached maximum medical improvement and was released to full-duty work and discharged from his care.

In a development letter dated October 22, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed and provided a questionnaire for his completion. In a separate development letter of the same date, OWCP also requested additional information from the employing establishment. It afforded both parties 30 days to respond. No additional evidence was received from appellant.

In an undated note the employing establishment indicated that OWCP did not forward the Form CA-1 to the agency until recently; however, the agency was aware of the accident and the supervisor signed the claim form on June 27, 2022.

By decision dated December 9, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the June 27, 2022 employment incident 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 FECA² 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,³ 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

² *Id.*

³ *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).

related to the employment injury.⁴ 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.⁵

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.⁶ Generally, 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.⁷ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁸

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.⁹ 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.¹⁰ 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 are of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on June 27, 2022, as alleged.

The record establishes that on June 27, 2022 appellant was lifting a bucket from the floor while in the performance of duty. He reported hearing a "pop" in his back and a sudden onset of bilateral low back pain after the incident. Appellant's supervisor, L.M., acknowledged on the

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *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).

⁶ *E.M.*, Docket No. 18-1599 (issued March 7, 2019).

⁷ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

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

¹⁰ *See V.J.*, Docket No. 19-1600 (issued March 13, 2020); *E.C.*, Docket No. 19-0943 (issued September 23, 2019).

¹¹ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

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, the medical evidence supports that appellant promptly sought treatment the day of the alleged June 27, 2022 employment incident. The record reveals that appellant was treated by Mr. Relic, a physician assistant, on June 27, 2022 for a sudden onset of bilateral low back pain that occurred when he lifted a bucket at work. Mr. Relic diagnosed a lumbar strain. He treated appellant in follow up on June 29, July 7, 18, and 27, and August 9, 2022 for the June 27, 2022 employment incident and diagnosed lumbar strain.

The injuries appellant claimed are consistent with the facts and circumstances he set forth, statements from supervisor, and appellant's course of action. As noted above, the injury does not have to 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.¹² 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.¹³ The Board thus finds that appellant has met his burden of proof to establish that the June 27, 2022 employment incident occurred in the performance of duty, as alleged.

As appellant has established that the June 27, 2022 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁴ Since OWCP found that he had not established an employment incident, it has not evaluated the medical evidence. The Board will, therefore, set aside OWCP's December 9, 2022 decision and remand the case for consideration of the medical evidence of record. After this and any other such 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 a traumatic incident in the performance of duty on June 27, 2022, as alleged.

¹² *Supra* note 9.

¹³ *See supra* note 11.

¹⁴ *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 December 9, 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: August 9, 2023
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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