

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

S.M., Appellant)	
)	
and)	Docket No. 23-0433
)	Issued: August 11, 2023
U.S. POSTAL SERVICE, POST OFFICE,)	
Bakersfield, CA, 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 February 6, 2023 appellant filed a timely appeal from a September 14, 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.²

ISSUE

The issue is whether appellant has met his burden of proof to establish a traumatic injury in the performance of duty on January 12, 2021, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the September 14, 2022 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 August 1, 2022 appellant, then a 29-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that he sustained post-traumatic stress disorder (PTSD) on January 12, 2021, when he was held hostage by a man who threatened his life if he did not comply with his commands, while in the performance of duty. On the reverse side of the claim form, C.V., appellant's supervisor, indicated that the injury was caused by a third party, noting that the identity of the individual was unknown. He further advised that he was not at the station when the event occurred. Appellant did not stop work.

In support of his claim, appellant submitted work status notes from his treating physicians dated August 25 through October 25, 2021, which contained diagnoses of psychiatric conditions, including PTSD, and placed him off work.

In an August 10, 2022 development letter, OWCP notified 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 even date, OWCP requested that the employing establishment provide comments from a knowledgeable supervisor regarding appellant's allegations. It afforded both parties 30 days to submit the requested evidence.

On August 11, 2022 the employing establishment controverted the claim asserting that appellant failed to provide objective evidence establishing that he sustained an injury and developed a medical condition causally related to that injury.

By letter dated September 9, 2022, the employing establishment responded to OWCP's development letter. It provided a copy of appellant's January 12, 2021 statement describing the events alleged to have occurred on that date. The employing establishment noted that his supervisor did not deny that the employing incident occurred. However, it questioned the sufficiency of the medical evidence as appellant did not seek treatment until seven months after the incident.

In the accompanying January 12, 2021 narrative statement, appellant reported that he was delivering mail in his postal truck on that date when a man approached him holding a clothing iron and metal pole. He began to brandish the items and demanded appellant give him a ride, threatening his life if he did not. The man was erratic, agitated, and jumped into the back of appellant's truck. He demanded appellant drive him to a specified location and threatened his life if he did not comply. Appellant recalled the assailant mentioning his full name but he could only remember the surname. He reported that the driver of a car stopped to ask him if he was being robbed. Appellant explained that he was too afraid to respond and that the assailant became frantic and began to scream at him to start driving. He began to drive and realized the driver who had stopped to check on him was following his truck. The assailant then forced appellant to turn into a fairgrounds and demanded that he be let out of the truck. Appellant reported that when he parked and got out of the truck to accede to the assailant's demand, the driver of the car following him pointed a handgun at the assailant, causing him to run off. He reported that the man with the handgun also left before he could talk to him. Appellant then called a supervisor after driving to a location away from the fairgrounds and remained in his vehicle until the police arrived.

By decision dated September 14, 2022, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the January 12, 2021 employment incident occurred in the performance of duty 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 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. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.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 to establish the occurrence of an injury when there are inconsistencies in the evidence that 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 *prima facie* case has been established.⁹ An employee's statements

³ *Supra* note 1.

⁴ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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 *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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 *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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 *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

⁹ *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

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 January 12, 2021, as alleged.¹¹

As noted, an employee's statement alleging that an injury 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.¹² In a January 12, 2021 statement, appellant described the traumatic incident that occurred on that date when an armed individual got into his postal vehicle and threatened his life unless he drove him to a specified location.

Although appellant delayed in filing his Form CA-1, his detailed statement contemporaneous to the January 12, 2021 employment incident is consistent with the facts and circumstances set forth in his statement. While the employing establishment controverted the claim, it has not provided strong or persuasive evidence to refute the occurrence of the January 12, 2021 employment incident at the time and place, and in the manner alleged by appellant.¹³ Appellant indicated that he contacted his supervisor after the alleged assailant escaped, and appellant's supervisor acknowledged the events that took place on the date of injury. There are no inconsistencies in the evidence that cast serious doubt upon the validity of the claim. The Board finds, therefore, that appellant has established a traumatic incident in the performance of duty on January 12, 2021, as alleged.¹⁴

As appellant has established that the January 12, 2021 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury.¹⁵ Because 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.¹⁶ After this and other 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

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

¹¹ See *F.F.*, Docket No. 22-0266 (issued September 27, 2022); *C.H.*, Docket No. 19-1781 (issued November 13, 2020).

¹² See *M.V.*, Docket No. 19-1040 (issued August 12, 2022); *J.B.*, Docket No. 19-1487 (issued January 14, 2020); *M.S.*, Docket No. 22-0106 (issued August 9, 2022); *M.C.*, *supra* note 10; *W.C.*, Docket No. 18-1651 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹³ See *M.S.*, *id.*

¹⁴ *C.B.*, Docket No. 21-0670 (issued January 27, 2022); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁵ See *L.O.*, Docket No. 20-0280 (issued October 1, 2021); *M.C.*, *supra* note 10.

¹⁶ *A.T.*, Docket No. 22-1103 (issued December 2, 2022).

causally related to the accepted January 12, 2021 employment incident, and any attendant disability.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish a traumatic incident in the performance of duty on January 12, 2021, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the September 14, 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 11, 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