

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

_____)	
D.J., Appellant)	
)	
and)	Docket No. 24-0638
)	Issued: August 22, 2024
U.S. POSTAL SERVICE, ALGIERS STATION)	
POST OFFICE, New Orleans, LA, 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 May 24, 2024 appellant filed a timely appeal from a May 7, 2024 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 her burden of proof to establish an injury in the performance of duty on January 24, 2024, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the May 7, 2024 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 25, 2024 appellant, then a 32-year-old carrier technician, filed a traumatic injury claim (Form CA-1) alleging that on January 24, 2024 she sustained inflammation and a scratch on the corneal surface of the left eye while in the performance of duty. She related that, a supervisor, C.C., deliberately threw a pen at her which struck her left eye, resulting in redness and discomfort.

In a statement dated January 24, 2024, appellant informed the employing establishment's inspection service that C.C. became angry when she refused to sign a letter of warning. C.C. took sheets to the printer and appellant followed her so she could get a copy of the papers. C.C. tried to throw papers in appellant's face, spoke in a hostile manner, and threatened violence against her using profanity.

In a January 24, 2024 email, C.C. related that she asked appellant for her scanner and keys so another employee could start her route delivery while she used union time. When she refused, C.C. instructed her to deliver her route rather than union time and asked her to sign a disciplinary action. Appellant "snatched the discipline and walked off toward the printer" and refused to give her back the paperwork. She signed the second disciplinary paperwork. C.C. began making a copy of the signed paperwork and appellant told her that her parents gave her away because they did not like her. C.C. became upset and told appellant that her parents were dead. Appellant and D.G., a coworker also in the room, laughed. C.C. related, "At this point I started crying harder and I blacked out because this is a triggering situation for me...." When C.C. regained consciousness, appellant was laughing and had her cellphone out. Appellant screamed that she was calling the police. Other coworkers hugged C.C. and told her to calm down.

In a statement dated January 24, 2024, K.R. advised that she heard appellant yelling at C.C. that her mother and father had abandoned her. C.C. jumped up and cried and K.R. tried to calm her down.

In a January 26, 2024 statement, E.T. related that she heard appellant tell C.C. that her parents had thrown her away. She knew that C.C.'s parents were dead but appellant thought that what she had said was funny. D.G., who was also present, indicated that she had recorded the incident.

In the first page of an undated statement, O.C., a coworker, advised that C.C. told him to take appellant's route out, but appellant refused and mumbled under her breath. O.C. related that C.C. acted respectfully toward appellant.

On January 26, 2024 E.T., a custodian, related that she heard appellant tell C.C. that her parents had thrown her away. She maintained that appellant created a hostile work environment and indicated that video was sent to her cellphone of the "malicious provoked act toward" C.C.

In a duty status report (Form CA-17) dated February 27, 2024, a healthcare provider diagnosed irritation and found that appellant could resume her usual employment.³

³ The name of the healthcare provider is not legible.

In a statement dated February 28, 2024, C.C. related that she and appellant had a verbal altercation on January 24, 2024. The employing establishment police arrived and took statements from appellant, herself, and witnesses. C.C. noted that appellant did not claim any physical contact or submit a claim “until she realized she had been put on emergency placement, no pay status.” She asserted that appellant had completed the Form CA-17 herself.

On February 29, 2024 the employing establishment challenged the claim based on the submitted statements.

In a March 5, 2024 report of work status (Form CA-3), the employing establishment advised that appellant had stopped work on January 24, 2024 and returned to her usual employment without restrictions on March 4, 2024.

On March 8, 2024 the employing establishment again challenged the claim and submitted a January 24, 2024 incident report from its inspection service. Sergeant B.B. and Lieutenant J.M. advised that they had responded to a call from appellant about a threat of violence against her by her supervisor, C.C. The police interviewed C.C., who related that appellant refused to sign a letter of discipline and then told her that her parents did not want her and gave her away while laughing. C.C. began crying because her parents were deceased. Appellant and D.G., a coworker, had their cellphones out and recorded the incident. Police also spoke with appellant, who maintained that C.C. became upset when she refused to sign the letter of discipline and “allegedly tried to throw papers at her.” C.C. also told appellant that she would “beat her a**.” The incident report further provided that on January 26, 2024 appellant came to the station with another statement. She maintained that “she was actually assaulted and not just threatened because an ink pen was allegedly thrown in her direction striking her in the eye. At no point during the day of the alleged incident when speaking with [Lt. J.M.] or I [Sgt. B.B.] did [appellant] mention being struck by an ink pen or any object for that matter.”

In a development letter dated March 12, 2024, OWCP advised appellant of the deficiencies of her claim. It informed her of the type of factual and medical evidence needed, provided an attending physician’s report (Form CA-20), for her physician to complete, and afforded her 60 days to respond.

Thereafter, OWCP received a January 24, 2024 statement from K.L., a coworker, who related that he had witnessed C.C. at the copier singing a song with vulgar lyrics. Appellant told her that she felt bad for her children and said something about her parents, and C.C. “told her not to do that because her parents were deceased.”

In a January 24, 2024 witness statement, D.G. related that appellant told C.C. that she wanted to read her warning letter before signing it. Appellant made a comment about C.C.’s parents. C.C. said that her parents were dead and she would “beat the f**k out of [appellant].”

In a statement dated January 24, 2024,⁴ R.A. saw appellant, D.G. and another coworker with their cellphones out. He heard appellant saying something about parents not wanting you to C.C., who became upset and began crying while appellant laughed.

⁴ The statement is dated January 24, 2023; however, this appears to be a typographical error.

On January 26, 2024 H.J., a coworker, related that since appellant began working as a shop steward, the station had declined due to her unprofessionalism, threatening actions, and failure to perform her job duties. He advised that C.C. tried to make the situation better. H.J. maintained that appellant, D.G. and two others had created a hostile work environment and harassed C.C.

In a state petition for protection from stalking or sexual assault form, appellant advised that on January 24, 2024 C.C. threatened her life and assaulted her by throwing an object in her face causing a left eye injury. Appellant advised that she had video footage. She also maintained that C.C. stalked her in an unmarked car and said that she carried a gun. Appellant also related that C.C. threatened to beat her up and faced criminal charges from another employee.

On March 4, 2024 a judge with the Civil District Court, Orleans Parish granted appellant a temporary restraining order against C.C. through March 15, 2024.

In a Judgment of Dismissal dated March 15, 2024, a judge dismissed appellant's petition for protection from abuse or from stalking/sexual abuse filed on March 4, 2024 with prejudice as a civil injunction had been issued.

A judge signed a civil injunction dated March 15, 2024 prohibiting C.C. from "harassing, stalking, and assaulting" appellant for six months.

In an undated statement, appellant related that C.C. physically assaulted and threatened her on January 24, 2024. She asserted that C.C. threw papers and a pen at her causing a corneal abrasion to the left eye. Appellant advised that her state of mind was not good when the police questioned her, and she was unable to provide all the details. She related that she provided an additional statement on January 26, 2024. On January 24, 2024 appellant scheduled an eye examination for the next day, and was diagnosed with a corneal abrasion to the left eye.

In an unsigned progress note dated March 28, 2024, Dr. Jeffrey A Colegrove, an optometrist, evaluated appellant for a left eye injury. He obtained a history of her having blurred vision since a pen was thrown in her eye on January 24, 2024. On examination Dr. Colegrove found no "scarring or residual eye effects."

In an undated statement, L.W., related that on January 24, 2024 she heard C.C. threaten appellant.⁵ L.W. related that C.C. and appellant were by the printer. C.C. turned toward appellant and "threw pen [and] paper in her face hitting her." C.C. also yelled that she was going to "beat the f**k out of" her.

In an undated statement received April 12, 2024, appellant advised that on January 24, 2024 a carrier asked her to tell C.C., a supervisor, that she was running late. She relayed the message and C.C. yelled at her that she was not a supervisor and that she did not need her to tell her anything. Later C.C. slammed down documents and a pen on her lapboard demanding appellant's signature. Appellant told her she would sign the document later, and C.C. called her a "b***h." She went to the break room and C.C. again asked for her signature on documents, including a letter of warning. Appellant signed the letter of warning and C.C. told her that she did

⁵ A portion of the statement is not legible. The record also contains additional witness statements that are not legible.

not need to read any of the other documents. She copied the letter of warning and handed it to C.C., who told her that she was going to make copies of the documents that appellant had refused to sign. They both went to the copy room. C.C. started dancing and singing a risqué song. She told appellant that she was a waste and failing her kids and parents. Appellant responded same to you and C.C. became angry and aggressive, telling her that she was going to “beat her a**.” C.C. threw documents and an ink pen at her which stuck appellant in the left eye, resulting in discomfort and redness. She told C.C. that she was going to call the police. The station manager, A.J., asked appellant to leave the station.

Subsequently, OWCP received a report dated January 25, 2024 from Dr. Quatruisa Irving, an optometrist, who diagnosed myopia, astigmatism, and an injury of the conjunctiva and corneal abrasion without foreign body. In a CA-17 form of even date, Dr. Irving diagnosed a corneal abrasion.⁶

By decision dated May 7, 2024, OWCP denied appellant’s traumatic injury claim. It found that she had not factually established the occurrence of the alleged January 24, 2024 employment incident. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁷ 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 filed within the applicable time limitation of FECA,⁸ that an injury was sustained while in the performance of duty as alleged; and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁹ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.¹⁰

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

⁶ The optometrist lists the date of the examination as January 25, 2024; however, the form is dated January 22, 2025, which appears to be a typographical error.

⁷ *Supra* note 1.

⁸ *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁹ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

¹⁰ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

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 an injury.¹¹

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.¹² 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.¹³ 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.¹⁴

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on January 24, 2024, as alleged.

In her January 25, 2024 Form CA-1, appellant alleged that on January 24, 2024 a supervisor, C.C., threw a pen at her which struck her left eye, causing redness and discomfort. She filed her traumatic injury claim within one day of the claimed injury. In her initial January 24, 2024 statement to the employing establishment's police, appellant related that C.C. tried to throw papers in her face, spoke hostilely, and threatened her with violence. On January 26, 2024 she advised the police that C.C. had thrown an ink pen at her which struck her in the eye. In a subsequent statement to OWCP, appellant explained that when initially questioned she was not in a sufficient state of mind to provide details. She asserted that she had scheduled an eye appointment on January 24, 2024 for the following day, and that the specialist diagnosed a corneal abrasion to the left eye. The record contains a January 25, 2024 report from an optometrist, who diagnosed a corneal abrasion. Appellant further submitted a witness statement from L.W., who asserted that on January 24, 2024 C.C. threw a pen and paper at appellant's face, hitting her.

The employing establishment controverted the claim as appellant had not alleged in her January 24, 2024 statement that C.C. threw a pen at her face; however, the record contains no other evidence refuting appellant's version of events. The record contains numerous witness statements confirming that appellant taunted C.C. about her parents, however, these statements fail to address whether C.C. threw a pen at appellant. In a January 24, 2024 e-mail, C.C. related that after

¹¹ *M.T.*, Docket No. 24-0439 (issued May 30, 2024); *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).

¹² See *M.C.*, Docket No. 23-1031 (issued December 29, 2023); *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667-71 (1987).

¹³ *D.M.*, Docket No. 23-180 (issued August 25, 2023); *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹⁴ See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

appellant told her that her parents had given her away and laughed when she told them that they were dead, she “blacked out” because it was a “triggering situation.” Appellant sought prompt medical care and filed her Form CA-1 within two days of the incident. The Board finds that there are no inconsistencies in the evidence sufficient to cast serious doubt upon the validity of the claim that the alleged incident occurred on January 24, 2024. Thus, the Board finds that appellant has met her burden of proof to establish that the January 24, 2024 employment incident occurred in the performance of duty, as alleged.¹⁵

As appellant has established that an incident occurred in the performance of duty on January 24, 2024, the question becomes whether the incident caused an injury.¹⁶ As OWCP found that she had not factually established the occurrence of the employment incident, it failed to evaluate the medical evidence. The case must, therefore, be remanded for consideration of the medical evidence of record.¹⁷ After this and other 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 January 24, 2024 employment incident.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on January 24, 2024, as alleged.

¹⁵ See *A.R.*, Docket No. 24-0242 (issued June 17, 2024); *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *J.Z.*, Docket No. 14-455 (issued June 16, 2014).

¹⁶ *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹⁷ *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

ORDER

IT IS HEREBY ORDERED THAT the May 7, 2024 decision of the Office of Workers' Compensation Programs is reversed and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: August 22, 2024
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