

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

L.T., Appellant)

and)

U.S. POSTAL SERVICE, RODNEY SQUARE)
POST OFFICE, Wilmington, DE, Employer)

Docket No. 24-0700
Issued: August 22, 2024

Appearances:

Jason Lomax, Esq., for the appellant¹
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 June 18, 2024 appellant, through counsel, filed a timely appeal from an April 2, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on April 9, 2022, as alleged.

FACTUAL HISTORY

On May 6, 2022 appellant, then a 46-year-old integration program manager, filed a traumatic injury claim (Form CA-1) alleging that on April 9, 2022 she sustained a back injury when scanning packages while in the performance of duty. She explained that all of the clerks left the building due to a gas smell, following a power outage, but she continued scanning the pallet and injured her lower back. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In a May 4, 2022 note, Dr. Wayne Tucker, an osteopath Board-certified in family medicine, indicated that appellant was disabled from work. In a May 12, 2022 clinical summary, he assessed lower back pain and, in a separate note on the same date, he indicated that she was unable to work and would remain off work until her next evaluation. In a June 6, 2022 clinical summary, Dr. Tucker assessed lower back sprain, and in a work status report on the same date, he noted that appellant was placed off work until his next evaluation on July 5, 2022. He saw her on July 5, 2022, and repeated his assessment of lower back pain.

In a development letter dated July 20, 2022, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

Dr. Tucker continued to treat appellant and placed her off work in notes dated August 2 and 23, 2022.

By decision dated August 25, 2022, OWCP denied appellant's claim. It found that she did not meet her burden of proof to establish that the claimed medical condition was causally related to the accepted employment incident.

OWCP received a magnetic resonance imaging (MRI) scan of appellant's lumbar spine dated May 11, 2022.

In a September 1, 2022 treatment note, Dr. Selina Xing, Board-certified in physical medicine and rehabilitation and pain medicine, noted a date of injury of April 9, 2022. She diagnosed radiculopathy, lumbar region; other low back pain; strain of muscle, fascia and tendon of lower back, initial encounter; muscle spasm of back; and lumbago with sciatica, left side. In a separate note also dated September 1, 2022, Dr. Xing noted that appellant related that the injury was caused by repetitive lifting and caused low back pain.

In a May 4, 2022 report, Dr. Tucker noted a May 1, 2022 date of injury, and explained that appellant was scanning packages at the employing establishment when she turned to the right side and felt something pull. He related that she kept working and felt her back stiffening. Dr. Tucker

assessed lower back sprain. He also noted that appellant had a prior history which included a cervical disc fusion.

In an August 23, 2022 duty status report (Form CA-17), Dr. Tucker noted an April 9, 2022 date of injury and related that appellant felt pulling and pain in the back and left hip while scanning. He diagnosed lumbar sprain and left hip pain.

In a September 6, 2022 report, Dr. Tucker noted a May 1, 2022 date of injury, and assessed lower back sprain. He provided a September 6, 2022 return to work note advising a return to light duty on September 12, 2022.

In a September 28, 2022 statement, appellant recounted that on April 4, 2022 she was scanning packages for delivery when she heard a popping noise and experienced sharp lower back pain. She explained that she had undergone surgery to her neck in August 2021 and returned to work in February 2022 with a restriction of working only four hours per day, and no lifting over 10 pounds. Appellant noted that she reported her injury the day that it happened. She alleged that her supervisor never reported the accident, and she had to get her union representative involved. Appellant also alleged that she was required to scan all the packages that day, even after she told her supervisor that all of the staff left due to gas fumes in the office, her supervisor screamed at her to get it done.

On September 25, 2022 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

OWCP continued to receive work restrictions from Dr. Tucker dated from October 17, 2022 to January 11, 2023.

By decision dated February 3, 2023, OWCP's hearing representative affirmed as modified the August 25, 2022 decision, finding that appellant had not established that the incident occurred as alleged, and had therefore not established fact of injury.

Dr. Mark Eskinder, a Board-certified orthopedic surgeon, provided a June 22, 2023 light-duty status report.

On January 10, 2024 counsel provided additional medical records.

On January 12, 2024 T.W., a co-worker, provided a statement relating that on April 9, 2022 appellant was working when electrical services were disconnected. She noted that appellant was instructed to take over daily operations of throwing packages out to the employing establishment parking lot. T.W. explained that most of the employees had gone home due to bad air quality, and that only she and appellant were left to throw packages. She related that appellant indicated that she had lower back pain from throwing the packages and that she could hardly stand up. T.W. noted that she told appellant to go home, she left for the day, and returned on April 11, 2022, even after her doctor advised her to stay home. She explained that appellant worked for several weeks against her doctor's orders for fear of not having office coverage for her staff and retaliation for being hurt on the job, while complaining of severe pain.

OWCP also received a statement from J.R., a co-worker, who noted that there was a power outage on the date when appellant injured her back, and appellant continued to work despite being in pain.

On January 29, 2024 counsel for appellant requested reconsideration and submitted additional medical evidence.

OWCP received text messages from April to June 2022. In text messages on April 9, 11, and 12, 2022, appellant informed her supervisor that she scanned packages on April 9, 2022 and hurt herself trying to work the parcels. She also provided a copy of her April 2022 work schedule.

OWCP also received an April 25, 2023 operative report indicating that appellant underwent a posterior spinal fusion with instrumentation at “4 to S1” with laminectomy.

In a November 9, 2023 report, Dr. Eskander indicated that appellant continued to remain off work.

In a January 24, 2024 report, Dr. Joshua B. Macht, a Board-certified internist, noted appellant’s history of injury, and diagnosed musculoligamentous sprain of the lower back and aggravation of lumbar degenerative disc disease. He opined that the description of appellant’s injury on April 9, 2022 was consistent with an acute onset of lower back pain. Dr. Macht recounted that appellant had engaged in the process of scanning packages with twisting, turning, and bending to lift and scan packages repetitively over the course of that workday. He also noted that there was a discrepancy regarding the date of injury, as Dr. Tucker indicated that it was May 1, 2022; however, this was an obvious error as all of the documentation corresponded with the April 9, 2022 date of injury. Dr. Macht opined that the claim should be accepted.

On February 23, 2024 appellant’s supervisor, G.N., noted that appellant never filed a claim, and he knew nothing about prior management frowning upon claims. He noted that appellant created her own situation with the clerks walking out. G.N. further noted that if appellant was throwing parcels, it was “her responsibility to work within her restrictions from a previous back injury.”

In a letter dated March 1, 2024, counsel for appellant argued that appellant’s supervisor did not refute her claim, and appellant had established the factual component of her claim.

By decision dated April 2, 2024, OWCP denied modification of the August 25, 2022 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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

³ *Id.*

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. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.⁷

To establish that an injury occurred as alleged, the injury need not 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. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on 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 the employee's statements in determining whether a *prima facie* case has been established.⁸ 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 an employment incident in the performance of duty on April 9, 2022, as alleged.

The evidence of record establishes that on April 9, 2022 appellant was scanning packages while in the performance of duty. Appellant provided a string of text messages from April to June 2022, which indicated that she texted her supervisor, G.N., on April 9, 11, and 12, 2022,

⁴ See *A.H.*, Docket No. 22-0912 (issued October 26, 2023); *D.T.*, Docket No. 22-1156 (issued April 24, 2023); *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 *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 *T.T.*, Docket No. 22-0792 (issued October 18, 2022); *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

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

wherein she informed her supervisor that she scanned packages on April 9, 2022 and that she hurt her back while scanning parcels.

On January 12, 2024 T.W., a co-worker, provided a statement in which she explained that on April 9, 2022 electrical services were disconnected, and appellant was instructed to take over daily operations of throwing packages out to the employing establishment parking lot. She noted that appellant informed her that she had lower back pain from throwing the packages, and she could hardly stand up. T.W. told appellant she should go home. She further related that appellant returned on April 11, 2022, and worked for several weeks against her doctor's orders for fear of not having office coverage for her staff and retaliation for being hurt on the job. OWCP also received a statement from J.R., a co-worker, who noted that there was a power outage on the day of appellant's injury, and that appellant continued to work despite being in pain. The medical evidence of record, including Dr. Macht's January 24, 2024 report, also supports that the employment incident occurred in the performance of duty on April 9, 2022, as alleged. Dr. Macht related that the reference to the date of injury in Dr. Tucker's report was an error.

The Board notes that on February 23, 2023 appellant's supervisor, G.N., indicated that appellant did not file a claim, he knew nothing about prior management frowning upon claims, and that it was appellant's responsibility to work within her restrictions from a previous back injury. However, G.N. did not dispute that the injury occurred on the date alleged by appellant.

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.¹⁰ 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.¹¹

The Board finds that the evidence of record is sufficient to establish that the incident occurred in the performance of duty on April 9, 2022, as alleged.

As appellant has established that the April 9, 2022 employment incident occurred as alleged, the question becomes whether this incident caused an injury.¹² Thus, the Board will set aside OWCP's April 2, 2024 decision, and remand the case for consideration of the medical evidence. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met her burden of proof to establish causal relationship.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on April 9, 2022, as alleged.

¹⁰ *Supra* note 8.

¹¹ *Supra* note 9.

¹² *See S.T.*, Docket No. 21-0317 (issued August 11, 2021); *B.S.*, Docket No. 19-0524 (issued August 8, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 2, 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