United States Department of Labor
Employees' Compensation Appeals Board

B.C., Appellant	)	
and	)	**Docket No. 24-0702**
	)	**Issued: August 22, 2024**
U.S. POSTAL SERVICE, LOS ANGELES NATIONAL DISTRIBUTION CENTER, Bell Gardens, 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 June 19, 2024 appellant filed a timely appeal from a January 24, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (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 that an injury occurred in the performance of duty on November 9, 2023, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that following the January 24, 2024 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 November 14, 2023 appellant, then a 32-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on November 9, 2023 at 11:15 p.m. she sustained a hip injury when she was struck by a moving vehicle in the employing establishment parking lot during a fire drill. On the reverse side of the form, R.D., appellant's supervisor, indicated that appellant was not injured in the performance of duty. She noted that appellant did not report the incident to management and showed no signs of being struck by a motor vehicle.

In a development letter dated November 16, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence necessary to establish the claim and attached a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In a statement dated November 9, 2023, K.L. stated that she saw an employee vehicle back into and strike appellant. She also saw supervisors, C.G. and A.S. tell the employee not to move her vehicle.

In a statement dated November 15, 2023, P.Y. related that on November 9, 2023 at approximately 11:10 p.m. that she was in her vehicle, getting ready to leave the employing establishment. She related that she moved the transmission gear from neutral to park. A.S. knocked on her window to tell her to wait, and not leave the parking lot until the fire drill had ended. P.Y. denied injuring or hitting anyone when she put her car back in park. She denied that any accident had occurred at all as no one screamed, no one let her know that she had hit someone, and no ambulance was called.

In a statement dated November 15, 2023, C.G. recounted that during the November 9, 2023 fire drill a white car was slowly pulling out of the employing establishment parking lot and employees yelled for the driver to stop. Employing establishment officials approached the vehicle and told the driver to stay in the parking lot and to turn off the car. Moments later, the same car was slowly reversing, C.G. related that she approached the driver and told the driver to turn off the car, place the emergency brake on, and leave a foot on the brake. C.G. further noted that she did not witness anyone being struck by the car, and at that time appellant did not address management regarding the matter.

In a statement dated November 17, 2023, A.S. related that during the fire drill on November 9, 2023 she saw P.Y. trying to back her vehicle out of her parking spot. A.S. related that she approached P.Y.'s vehicle, knocked on her window and told her she could not leave during the fire drill, and that she should place her vehicle in a parking position and turn the car off. A.S. further related that 15 minutes later P.Y. tried to back her car out again. A.S. and C.G. approached P.Y. and told her to place her car in park, as it was a safety hazard. A.S. concluded that no one was struck by the car.

In a statement dated November 17, 2023, A.H. related that a fire alarm drill occurred on November 9, 2023 at approximately 11:00 p.m. which required that employees evacuate and go to the emergency evacuation assembly area. Within five to seven minutes of the evacuation P.Y. walked towards her car which was parked near the emergency evacuation assembly area. She subsequently saw P.Y.'s vehicle starting to reverse, with employees standing approximately 10½ feet behind the vehicle, with the car lights and engine on. A.S. told P.Y. that she could not drive

during a fire drill and to immediately stop her car. A.H. noted that a few minutes later P.Y. reversed the vehicle again slowly.

In a November 15, 2023 duty status report (Form CA-17), Dr. Joline Tilly, a family medicine specialist, noted a November 9, 2023 injury date and diagnosed lumbar sprain.

In November 15, 2023 form report, Dr. Tilly noted that appellant was seen for an injury that occurred on November 9, 2023 at 11:15 p.m. when appellant was hit by a motor vehicle while appellant was standing in the designated area during a fire drill. She provided examination findings and diagnosed lumbar sprain, which she attributed to a motor vehicle accident.

On November 24, 2023 the employing establishment controverted the claim, indicating that witness statements did not support the claim, and that appellant had not reported that the incident occurred.

In a December 6, 2023 form report and CA-17 forms dated December 6 and 13, 2023, Dr. Tilly diagnosed lumbar sprain due to a motor vehicle accident.

In a follow-up letter dated December 14, 2023, OWCP advised appellant that it conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the November 16, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would issue a decision based on the evidence contained in the record.

In a January 4, 2024 statement, appellant noted she had provided a witness statement from K.L. confirming her description of how the incident occurred. She disagreed with the witness statements provided by various supervisors, noting that their attention could not have been directed solely on P.Y.'s vehicle as the supervisors were actively looking for employees to verify that everyone had left the building. P.Y. was also a supervisor and should have known she could not leave the parking lot during a fire drill. Appellant related that she did not see the car move towards her or she would have moved, however she was in shock following the incident and did not feel pain until two hours after her shift. She also explained that she was on probation, and therefore she was trying to stay "under the radar and not make a fuss about the accident." Appellant did return to work and complete her shift despite the pain which began later in her shift.

By decision dated January 24, 2024, OWCP denied appellant's traumatic injury claim, finding that the factual evidence of record was insufficient to establish that the employment incident occurred as 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 FECA[3] 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

[3] *Supra* note 1.

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 an 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 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.[10]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on November 9, 2023, as alleged.

As noted, an employee's statement alleging that an injury occurred at a given time and place, and in the manner alleged is of great probative value, and will stand unless refuted by strong

[4] *See A.R.,* Docket No. 24-0242 (issued June 24, 2024); *R.M.*, Docket No. 23-0365 (issued October 18, 2023); *Y.S.,* Docket No. 22-1142 (issued May 11, 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] *A.R.*, *id.*; *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] *A.R.*, *id.*; *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] *A.R.*, *id.*; *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] *See A.R.*, *id.*; *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).

[9] *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).

[10] *See A.R.*, *supra* note 4; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

or persuasive evidence.[11] Appellant alleged in her November 14, 2023 Form CA-1 that on November 9, 2023 she sustained a hip injury during a fire drill when she was struck by an automobile backing out of a parking space in the designated evacuation assembly area. OWCP also received a January 4, 2024 statement from appellant wherein she noted she had provided a witness statement from K.L. confirming her description of how the incident occurred, and her disagreement with the witness statements provided from various supervisors.

In addition to the witness statement from K.L, who confirmed that appellant was struck by a vehicle in the employing establishment parking lot during the fire drill on November 9, 2023, OWCP received witness statements from R.D, C.G., A.S., and A.H. These additional witnesses corroborated that P.Y., a supervisor, attempted to drive away during the fire drill, that P.Y. reversed her vehicle during the fire drill, and that P.Y. was told to stop her vehicle because attempting to drive away during the fire drill created a safety hazard.

As previously noted, 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]

Appellant sought medical care on November 15, 2023 with Dr. Tilly, who noted that appellant was hit by a motor vehicle on November 9, 2023 while standing in a designated area during a fire drill, and diagnosed lumbar sprain.

The injuries appellant claimed are consistent with the facts and circumstances she set forth, her subsequent course of action, and the medical evidence she submitted. The Board thus finds that she has met her burden of proof to establish that the employment incident occurred in the performance of duty on November 9, 2023, as alleged.[13]

As appellant has established that, an incident occurred in the performance of duty on November 9, 2023 as alleged, the question becomes whether the incident caused an injury.[14] As OWCP found that she 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.[15] 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 November 9, 2023 employment incident.

[11] *E.L.*, Docket No. 24-0341 (issued May 10, 2024); *T.V.*, Docket No. 22-0968 (issued April 25, 2019); *D.F.,* Docket No. 21-0825 (issued February 17, 2022); *see also M.C., id*.; *D.B., id*..

[12] *Supra* note 8.

[13] *E.L.*, *supra* note 11; *T.V.,* Docket No. 22-0968 (issued October 23, 2023); *C.M.,* Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith,* 54 ECAB 174 (2002).

[14] *E.L.*, *id*.; *D.F.*, *supra* note 11; *M.A.,* Docket No. 19-0616 (issued April 10, 2020); *C.M.,* Docket No. 19-0009 (issued May 24, 2019).

[15] *E.L., id*.; *D.F., id*.; *L.D., supra* note 9; *Betty J. Smith, supra* note 13.

CONCLUSION

The Board finds that appellant has met her burden of proof to establish an employment incident in the performance of duty on December 9, 2023, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 24, 2024 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