United States Department of Labor
Employees' Compensation Appeals Board

K.M., Appellant	)	
and	)	**Docket No. 24-0678**
	)	**Issued: July 16, 2024**
U.S. POSTAL SERVICE, POST OFFICE, Trion, GA, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On June 11, 2024 appellant filed a timely appeal from a June 5, 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 a traumatic injury in the performance of duty on February 26, 2024, as alleged.

[1] 5 U.S.C. § 8101 *et seq*.

[2] The Board notes that, following the June 5, 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 March 15, 2024 appellant, then a 26-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on February 26, 2024 at 1:30 p.m., she sustained fractures of the left humerus, left radial styloid process, and nasal bone; right femur dislocation; left elbow trauma; and a concussion when, after delivering a package, her vehicle crashed into a gate and brick post at the end of a steep driveway while in the performance of duty. Her description of the cause of the claimed injury was, "I wrecked my car on mail route. I do not recall what happened. I remember delivering a package to the property owner. I then remember starting to go down the steep driveway. The next thing I remember is someone asking if I was ok. My car was crashed into the gate and brick post at the end of the driveway." On the reverse side of the Form CA-1, appellant's supervisor acknowledged that appellant was injured in the performance of duty, and stopped work on February 27, 2024 at 1:30 p.m.

On March 25, 2024, the employing establishment contended that according to time records, appellant was not at work on February 26, 2024 and noted that appellant had stated she did not recall what happened. An unsigned March 25, 2024 report of work status (Form CA-3) indicated that appellant stopped work on February 26, 2024 and returned to work at full-time regular duty with no restrictions on February 27, 2024.

In a March 26, 2024 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed, and provided a questionnaire for her completion. OWCP afforded appellant 60 days to respond.

In a follow-up letter dated April 19, 2024, OWCP advised appellant that it had performed an interim review of the case file, and the evidence remained insufficient to establish her claim. It advised her of the type of factual and medical evidence needed and noted that she had 60 days from the March 26, 2024 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.

Appellant submitted medical evidence dated February 27 through April 30, 2024.

On April 25, 2024 appellant clarified that the date of injury was February 27, 2024, not February 26, 2024. She noted that she had a concussion. Appellant submitted a written statement, received on May 9, 2024, which noted that the claimed traumatic injury occurred on February 27, 2024, not February 26, 2024, as initially indicated on the Form CA-1.

By decision dated June 5, 2024, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that the employment incident occurred 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 FECA[3] 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,[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 must first be determined whether fact of injury has been established.[7] 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 and place, and in the manner alleged.[8] Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[9]

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.[10] 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.[11] An employee's statement

[3] 5 U.S.C. § 8101 *et seq*.

[4] *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).

[5] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[6] *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).

[7] *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

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

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

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

[11] *Betty J. Smith*, 54 ECAB 174 (2002); *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.[12]

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on February 27, 2024, as alleged.

Appellant clarified that the injury occurred on February 27, 2024, not February 26, 2024, as reported. She alleged that on February 27, 2024, after delivering a package, she crashed her vehicle into a gate and brick post at the end of a steep driveway while in the performance of duty. Appellant's description of the employment incident of February 27, 2024 is not contradicted by the medical reports or any other evidence of record. Moreover, the medical evidence indicates that she first sought treatment for the claimed conditions on February 27, 2024. Appellant's account of the alleged incident is consistent with the surrounding facts and circumstances, and her subsequent course of action does not cast serious doubt on the validity of the claim. Moreover, appellant's supervisor acknowledged on the reverse side of the Form CA-1 that appellant was injured in the performance of duty.

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.[13] 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.[14]

As the evidence of record is sufficient to establish that the incident occurred on February 27, 2024 as alleged in the performance of duty, the Board finds that appellant has met her burden of proof.

As appellant has established that the February 27, 2024 employment incident occurred as alleged, the relevant question becomes whether this incident caused a personal injury.[15] Thus, the Board shall remand the case for consideration of the medical evidence. Following 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 employment incident.

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

[13] *Id.*

[14] *Id*.

[15] *See C.M., id.*; *B.S.*, Docket No. 19-0524 (issued August 8, 2019); *Willie J. Clements*, 43 ECAB 244 (1991).

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on February 27, 2024, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the June 5, 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: July 16, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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