

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

A.R., Appellant	)	
	)	
and	)	Docket No. 24-0242
	)	Issued: June 17, 2024
U.S. POSTAL SERVICE, POST OFFICE, Pittsburgh, PA, 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 January 10, 2024 appellant filed a timely appeal from a November 6, 2023 merit decision and a December 21, 2023 nonmerit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUES**

The issues are: (1) whether appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on August 16, 2023, as alleged;<sup>2</sup> and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> Although the decision on appeal notes the date of injury as August 15, 2023, the case record establishes that appellant alleged an August 16, 2023 injury.

## **FACTUAL HISTORY**

On August 24, 2023 appellant, then a 37-year-old city carrier assistant, filed a traumatic injury claim (Form CA-1) alleging that on August 15, 2023 she sustained injuries to her neck, left side, back and hips, when her employing establishment vehicle was rear-ended, and she was ejected from the vehicle while in the performance of duty. On the reverse of the claim form, the employing establishment acknowledged that she was injured in the performance of duty, but indicated that its knowledge of the facts did not comport with her statements. It asserted that there was no medical documentation to support the claim.

In an August 30, 2023 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical evidence necessary to establish her claim and afforded her 60 days to submit the necessary evidence.

In a letter dated September 12, 2023, I.L., a health and resource specialist with the employing establishment controverted the claim. She noted that appellant was not working on the date of the alleged injury, as it was her scheduled day off. A copy of the employee record management system print-out was submitted. I.L. further noted that there was no medical evidence to support the claim.

OWCP received an August 16, 2023 emergency provider note, which indicated that appellant presented with neck and back pain and diffuse myalgia after a motor vehicle accident earlier that day. It also received after-visit summaries dated September 1 and 15, 2023. A state medical report noted the date of injury as August 16, 2023.

In a letter dated September 21, 2023, OWCP requested additional information from the employing establishment including the exact date and time of the injury, and copies of the timesheet/clock rings on August 15, 2023. It also requested that the employing establishment address whether appellant was engaged in official duties and driving an employing establishment vehicle at the time of the alleged incident.

In follow-up letters dated September 21 and October 11, 2023, OWCP advised appellant that it had conducted an interim review, and the evidence remained insufficient to establish her claim. It noted that she had 60 days from the August 30, 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. No additional evidence was received. OWCP subsequently received a leave analysis report showing that appellant worked on August 14 and 16, 2023. An October 17, 2023 agency response to the development letter reiterated that she was not clocked in on August 15, 2023 the alleged date of the incident, as it was her scheduled day off. The response also noted that the accident report indicated that appellant was driving an employing establishment vehicle, there was minor damage, and she did not explain how she was ejected from the vehicle if she had her seatbelt on. The date of the accident report was not addressed, and a copy of the accident report was not submitted.

OWCP thereafter received hospital and treatment notes dated August 16, 2023 from Dr. Jack V. Ko, a Board-certified emergency medicine physician, who related that appellant was standing in her postal vehicle sorting mail when another vehicle struck the back of the postal truck. Appellant was thereafter ejected from the vehicle and landed on grass. He diagnosed acute strain of neck muscle, initial encounter; acute low back pain without sciatica; unspecified back pain

laterally; and motor vehicle accident, initial encounter. OWCP also received treatment notes from Dr. Nathan Bucks, a Board-certified family practice and sports medicine physician.

OWCP also received diagnostic testing reports, including August 16, 2023 x-rays of appellant's lumbar spine and cervical spine.

By decision dated November 6, 2023, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the employment incident occurred on August 15, 2023, as alleged. It therefore concluded that she failed to establish an injury as defined by FECA.

On December 7, 2023 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated December 21, 2023, OWCP determined that appellant was not entitled to an oral hearing as a matter of right because her request was not made within 30 days of issuance of the November 6, 2023 decision. It further determined that it would not exercise its discretion to grant a hearing, as the issue could equally well be addressed by submitting a request for reconsideration with additional evidence.

### **LEGAL PRECEDENT -- ISSUE 1**

An employee seeking benefits under FECA<sup>3</sup> 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<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *See 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).

<sup>5</sup> *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).

<sup>6</sup> *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).

<sup>7</sup> *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).

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on August 16, 2023, as alleged.

OWCP received several medical reports documenting that the alleged incident occurred on August 16, 2023. This evidence included an August 16, 2023 emergency provider note, which indicated that appellant presented with neck and back pain, and diffuse myalgia after a motor vehicle accident earlier that day; August 16, 2023 x-rays of appellant's lumbar and cervical spine; and a state medical report noting the date of injury as August 16, 2023. OWCP also received hospital records dated August 16, 2023, from Dr. Ko, who related that appellant was standing in her postal vehicle sorting mail when another vehicle struck the back of the truck. Dr. Ko diagnosed acute strain of neck muscle, initial encounter; acute low back pain without sciatica; unspecified back pain laterally; and motor vehicle accident, initial encounter.

While the employing establishment controverted the claim, its focus was on whether the incident occurred on August 15, 2023. There are no major inconsistencies in the evidence sufficient to cast serious doubt upon the validity of the claim that the alleged incident occurred on August 16, 2023. Thus, the Board finds that appellant has met her burden of proof.<sup>11</sup>

As appellant has established that an incident occurred in the performance of duty on August 16, 2023, the question becomes whether the incident caused an injury.<sup>12</sup> As OWCP found that she had not established fact of injury, it did not evaluate the medical evidence with regard to causal relationship. The case must, therefore, be remanded for consideration of the medical

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<sup>8</sup> 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).

<sup>9</sup> *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).

<sup>10</sup> See *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

<sup>11</sup> See *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *J.Z.*, Docket No. 14-455 (issued June 16, 2014).

<sup>12</sup> *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

evidence of record.<sup>13</sup> 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 August 16, 2023 employment incident.<sup>14</sup>

**CONCLUSION**

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on August 16, 2023, as alleged.

**ORDER**

**IT IS HEREBY ORDERED THAT** the November 6, 2023 merit 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. The December 21, 2023 nonmerit decision of the Office of Workers' Compensation Programs is set aside as moot.

Issued: June 17, 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

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<sup>13</sup> *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>14</sup> In light of the Board's disposition regarding Issue 1, Issue 2 is rendered moot.