



## **FACTUAL HISTORY**

On July 22, 2022 appellant, then a 52-year-old social worker, filed a traumatic injury claim (Form CA-1) alleging that on July 11, 2022 her vocal cords were injured during administration of a COVID-19 test throat swab while in the performance of duty. She explained that the nurse administering the test made her say “ah” which caused her vocal cords to open/close/vibrate and that the nurse then placed the swab too far down her throat, which caused injury to her vocal cords. Appellant stopped work on July 25, 2022.

In a July 18, 2022 report, Dr. Sarah Agsten, a Board-certified osteopath and family medicine specialist, provided work restrictions due to a potential vocal cord injury. She added, in a July 26, 2022 note, that per patient, the potential vocal cord injury occurred during mandatory COVID-19 testing at work on July 11, 2022.

On August 3, 2022 the employing establishment challenged the claim as the mechanism of the alleged injury was not anatomically possible. In an August 2, 2022 statement, S.N., a licensed practical nurse, disputed that a swab could have made its way to the vocal cords due to the swab’s length. S.N. also noted that the back of the throat was swabbed. Medical literature concerning the anatomy of larynx as well as a picture of the vocal cords were attached.

In an August 5, 2022 statement, M.H., the nurse who administered appellant’s COVID-19 swab, described how the nasopharyngeal swab collection was performed. She noted that the swab had soft cotton tips and that no piercing of any anatomy had occurred. M.H. indicated that she swabbed the right side of the tonsillar area, then left, then past the uvula on the left side (her right) and then the back of the throat. She indicated that appellant had questioned whether her voice sounded different and if she had hit her vocal cords, to which she replied that appellant’s voice did not sound any different to her and she did not believe she had hit appellant’s vocal cords. M.H. further stated that there were no tears streaming down appellant’s face. She opined that, due to the length of the swab, she did not believe it was possible to hit the vocal cords.

In an August 2, 2022 report, Dr. Agsten recounted that appellant had a COVID-19 test performed at work on July 11, 2022 during which a deep oropharyngeal swab was performed. Appellant reported initial pain and scratchy throat and that the quality of her speech was affected. Dr. Agsten noted that appellant was initially seen on July 18, 2022 and had been off work for vocal rest. Appellant also related that she was seen by Dr. Prashant Vivek, a Board-certified otolaryngologist, the previous day, and that her laryngoscopy revealed no visible damage to the vocal cords. Dr. Agsten diagnosed dysphonia, improved, and released appellant to work with restrictions.

In a report dated September 6, 2022, Dr. Agsten related that appellant had returned to work and that she was able to talk all day. However, appellant continued to feel that the quality of her voice and ability to sing were affected.

In a September 12, 2022 development letter, OWCP advised appellant of the deficiencies of her claim and requested additional factual and medical evidence. It afforded her 30 days to respond.

OWCP received appellant's statement and a July 18, 2022 e-mail to O.W., appellant's supervisor. Appellant reiterated her allegations regarding the claimed July 11, 2022 employment incident. She also described that the instrument used for collection was a sharp wire with plastic, like a pipe cleaner made of sharp plastic. Appellant also described her immediate symptoms, which included tears streaming down her face from the injury.

OWCP received additional form medical reports from Dr. Agsten. In an August 2, 2022 attending physician's report (Form CA-20), Dr. Agsten diagnosed dysphonia and opined, with a checkmark "Yes," that the dysphonia was caused or aggravated by oropharyngeal injury from a deep oropharyngeal swab for COVID-19.

Progress reports from Dr. Agsten dated July 18 through September 22, 2022 were also received. In the July 18, 2022 initial report, Dr. Agsten recounted the history of injury, as reported by appellant. Appellant indicated that during a COVID-19 test at work on July 11, 2022 the throat swab, that felt abrasive, went deep into her throat and she felt like her vocal cords were being scraped with the bristled swab. She reported immediate coughing. Since that time appellant throat has been irritated with a change to her voice such that she could not speak loudly or sing. Dr. Agsten provided a diagnosis of other specified injuries of vocal cord, new onset. In reports dated August 2 and September 6, 2022, she reported appellant's symptoms and diagnosed dysphonia, improved. In a September 22, 2022 report, Dr. Agsten reported on appellant's improved dysphonia. She opined, based on appellant's initial symptoms, that the diagnosis was more consistent with a vocal cord injury causing dysphonia than vocal cord paralysis. Dr. Agsten indicated that the otolaryngologist's evaluation of her vocal cords at the time of her examination on August 1, 2022, after vocal rest, was normal. She reported appellant's symptoms, noting that appellant was not back to her prior baseline of pitch control, loud speaking, or singing. Dr. Agsten opined that appellant's description of the initial injury during the COVID testing on July 11, 2022 was consistent with potential injury to the vocal cords.

OWCP also received the August 1, 2022 report from Dr. Vivek. Dr. Vivek related that appellant was seen for dysphonia after COVID test on July 11, 2022. He explained there were no structural problems with her vocal cords and that the flexible laryngoscopy was normal with no pharyngeal laryngeal lesions, tonsillar fossa mass or asymmetry. Dr. Vivek diagnosed dysphonia and referred appellant to voice therapy.

In a September 27, 2022 report, Dr. Agsten advised that appellant's initial diagnosis of other specified injuries of vocal cord was changed to a diagnosis of dysphonia per her otolaryngologist's evaluation. She opined that based on appellant's initial symptoms, appellant's diagnosis was more consistent with a vocal cord injury causing dysphonia than vocal cord paralysis. Dr. Agsten further opined that appellant's description of the initial injury during the July 11, 2022 COVID-19 testing was consistent with potential injury to the vocal cords.

By decision dated November 23, 2022, OWCP denied appellant's claim finding that the medical evidence failed to demonstrate that the claimed medical condition was causally related to the accepted July 11, 2022 work-related incident.

On December 16, 2022 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a March 27, 2023 report, Dr. Agsten reiterated the history of injury as reported by appellant and her medical course. She opined that dysphonia could have occurred from the COVID-19 test if the swab was administered too deeply into the throat. Dr. Agsten explained that if the throat swab was administered too deeply into the throat, it could have caused inflammation, which could have caused the dysphonia. She indicated that at the time of appellant's July 18, 2022 initial examination, appellant had no other symptoms upon general examination that may have caused the dysphonia. Dr. Agsten opined that appellant's diagnosis was consistent with a vocal cord injury resulting in dysphonia stemming from the July 11, 2022 COVID-19 testing. She indicated that her opinion was based on appellant's reported symptoms and description of the COVID-19 test being done with an abrasive swab and administered too deeply.

A telephonic hearing was held June 7, 2023.

In a July 6, 2023 response to the hearing, the employing establishment clarified that the swab used in the COVID-19 testing had a Q-tip like collection tip, requiring only the back of the throat be swabbed, and that it was not 12 inches in length. Earlier documents previously of record were referenced.

By decision dated July 28, 2023, an OWCP hearing representative modified the prior decision to find the medical component of fact of injury not established. The hearing representative further found that the medical evidence was insufficient to establish that the diagnosed dysphonia condition was causally related to the accepted employment incident.

### **LEGAL PRECEDENT**

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 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,<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 if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident at the time and

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<sup>3</sup> *Supra* note 1.

<sup>4</sup> *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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

<sup>6</sup> *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

place, and in the manner alleged.<sup>7</sup> The second component is whether the employment incident caused an injury.<sup>8</sup>

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.<sup>9</sup> The employee has not met his or her burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to 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 statement in determining whether a *prima facie* case has been established.<sup>10</sup> 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.<sup>11</sup>

### ANALYSIS

The Board finds that appellant has met her burden of proof to establish that a traumatic incident occurred in the performance of duty on July 11, 2022, as alleged.

On her November 14, 2022 Form CA-1, appellant described that on July 22, 2022 her vocal cords were injured during administration of a COVID-19 test throat swab while in the performance of duty.

In response to OWCP's September 12, 2022 development letter, appellant described that the instrument used for collection was a sharp wire with plastic, like a pipe cleaner made of sharp plastic. In addition, Dr. Agsten in her September 22, 2022 report indicated that appellant's description of the initial injury during the COVID testing on July 11, 2022 was consistent with potential injury to the vocal cords. As noted, 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.<sup>12</sup> Appellant has consistently stated that her injury occurred on July 11, 2022 when her throat was swabbed for a COVID-19 test.<sup>13</sup> There is no evidence of record that casts serious doubt on appellant's account of the July 11, 2022 incident.

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<sup>7</sup> *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>8</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>9</sup> *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

<sup>10</sup> *C.M.*, Docket No. 20-1519 (issued March 22, 2019); *S.A.*, Docket No. 19-0613 (issued August 22, 2019); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>11</sup> *A.C.*, Docket No. 18-1567 (issued April 9, 2019); *D.B.*, 58 ECAB 529 (2007); *Gregory J. Reser*, 57 ECAB 277 (2005).

<sup>12</sup> *Id.*

<sup>13</sup> *See C.F.*, Docket No. 23-0290 (issued July 12, 2023).

Therefore, the Board finds that appellant has met her burden of proof to establish that an incident occurred in the performance of duty on July 11, 2022 as alleged.<sup>14</sup>

As appellant has established that the July 11, 2022 incident occurred in the performance of duty as alleged, the question becomes whether the incident caused an injury.<sup>15</sup> 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.<sup>16</sup> 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 October 12, 2022 employment incident.

### **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 July 11, 2022, as alleged.

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<sup>14</sup> See *J.V.*, Docket No. 21-0029 (issued April 15, 2022); *C.B.*, Docket No. 21-0670 (issued January 27, 2022).

<sup>15</sup> *C.H.*, Docket No. 19-1781 (issued November 13, 2020); *A.C.*, Docket No. 18-1567 (issued April 9, 2019).

<sup>16</sup> *W.R.*, Docket No. 17-0287 (issued June 8, 2018).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 28, 2023 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: May 2, 2024  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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