



## **FACTUAL HISTORY**

On August 2, 2023 appellant, then a 50-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 22, 2022 she sustained cervical disc disorder and a cervical injury at C5-6 and C6-7 while in the performance of duty. She attributed her condition to a task performed while working in a modified-duty position as the result of a prior work injury. Appellant stopped work on October 22, 2022, and returned to work on January 3, 2023. Although the employing establishment acknowledged that appellant was in the performance of duty, it controverted the claim, alleging that it was not filed within 30 days from the date of the alleged injury.

A magnetic resonance imaging (MRI) scan of the cervical spine, obtained on October 4, 2022, demonstrated multilevel age-indeterminate degenerative changes causing effacement of the ventral thecal sac and neural foraminal narrowing particularly at C6-7 and C5-6, straightening of the normal cervical lordosis, and T1 bone marrow signal that may be within normal limits.

In a development letter dated August 10, 2023, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of additional factual and medical information needed, including a detailed factual description of the alleged employment incident, and provided a questionnaire for her completion. OWCP afforded appellant 60 days to submit the necessary evidence.

In a memorandum to the file dated August 30, 2023, OWCP noted that appellant had a prior workers' compensation claim for the right shoulder, assigned OWCP File No. xxxxxx595, and that she had stopped work under that claim due to a recurrence of disability on October 24, 2022.

In a follow-up letter dated September 13, 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 10, 2023 letter to submit the requested supporting evidence. OWCP further advised that if the evidence was not received during this time, it would make a decision based on the evidence contained in the record. No additional evidence was received.

By decision dated January 10, 2024, OWCP denied appellant's traumatic injury claim, finding that she had not submitted sufficient evidence to establish that the October 22, 2022 incident occurred, as alleged. Consequently, it found that she had not met the requirements to establish an injury as defined by FECA.

## **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 filed within the applicable time

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

limitation of FECA,<sup>4</sup> that an injury was sustained while in the performance of duty as alleged, and that any disability or specific 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 on 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.<sup>7</sup> Generally, 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 that allegedly occurred at the time and place and in the manner alleged.<sup>8</sup> The second component is whether the employment incident caused an injury.<sup>9</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>10</sup> In determining whether a case has been established, such circumstances as late notification of injury, lack of confirmation of injury, and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on the employee's statements. 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.<sup>11</sup> 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.<sup>12</sup>

### ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on October 22, 2022, as alleged.

In her Form CA-1, appellant alleged that on October 22, 2022 she sustained a cervical condition as a result of performing her modified work duties. OWCP, in its August 10, 2023

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<sup>4</sup> *C.B.*, Docket No. 21-1291 (issued April 28, 2022); *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>5</sup> *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *R.C.*, 59 ECAB 427 (2008).

<sup>6</sup> *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *T.E.*, Docket No. 18-1595 (issued March 13, 2019); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>7</sup> *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *S.S.*, Docket No. 18-1488 (issued March 11, 2019); *T.H.*, 59 ECAB 388 (2008).

<sup>8</sup> *J.V.*, Docket No. 21-0029 (issued April 15, 2022); *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

<sup>9</sup> *Id.*

<sup>10</sup> *C.J.*, Docket No. 23-0997 (issued January 17, 2024); *S.W.*, Docket No. 17-0261 (issued May 24, 2017).

<sup>11</sup> *J.F.*, Docket No. 23-0492 (issued November 8, 2023); *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *Betty J. Smith*, 54 ECAB 174 (2002).

<sup>12</sup> *D.F.*, *id.*; *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

development letter, requested that she complete an attached questionnaire and provide a detailed factual description of the alleged employment incident. However, appellant did not respond to the development letter or otherwise provide a factual statement describing the incident alleged to have caused or contributed to a medical condition.

As the evidence of record is insufficient to establish that the alleged employment incident occurred on October 22, 2022 as alleged, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128 and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on October 22, 2022, as alleged.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the January 10, 2024 decision of the Office of Workers' Compensation Programs is affirmed.<sup>13</sup>

Issued: May 8, 2024  
Washington, DC

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

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

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

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<sup>13</sup> Upon return of the case record, OWCP should consider administratively combining this file, OWCP File No. xxxxxx148 with OWCP File No. xxxxxx595.