

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

M.T., Appellant)	
)	
and)	Docket No. 24-0439
)	Issued: May 30, 2024
U.S. POSTAL SERVICE, LOS ANGELES POST)	
OFFICE, Los Angeles, CA, Employer)	
)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On March 21, 2024 appellant filed a timely appeal from a February 7, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (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 his burden of proof to establish that a traumatic injury occurred in the performance of duty on June 13, 2023, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the February 7, 2024 decision, appellant submitted additional evidence to OWCP. 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 new evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On June 13, 2023 appellant, then a 61-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on June 6, 2023 at 11:00 a.m. he sustained a sprain of the left shoulder girdle when lifting cardboard boxes while in the performance of duty. He did not immediately stop work. On the reverse side of the claim form, C.E., appellant's supervisor, indicated that appellant was not injured in the performance of duty. She noted that he was not at work on June 6, 2023, but was on vacation. C.E. further indicated that her knowledge of the facts differs from that of the employee noting that appellant was not at work on June 6, 2023 and on June 13, 2023, he was not working at his assigned location. She noted that on June 13, 2023, J.A., a supervisor, reported that appellant was not at his assigned location at the time of the alleged accident. C.E. noted his work hours were from 8:00 a.m. to 4:45 p.m. but did not provide his regular schedule.

On June 13, 2023 Dr. Kayvon Yadidi, a Board-certified occupational medicine specialist, diagnosed sprain of other specified parts of the left shoulder girdle. He returned appellant to modified duty from June 13 through 16, 2023.

On June 16, 2023 the employing establishment challenged appellant's claim noting that on the alleged date of injury, June 6, 2023, he was on annual leave from June 3 through 9, 2023. It further challenged his claim noting that on June 13, 2023 he was not at his assigned location. The employing establishment contended that appellant alleged an injury in the performance of duty because he was going to be disciplined.

In a development letter dated June 21, 2023, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to establish the claim and attached a questionnaire for his completion. OWCP afforded appellant 60 days to respond.

OWCP received a June 26, 2023 form report from Dr. Christopher DeCarlo, a Board-certified physiatrist, who treated appellant for left shoulder pain that began at work on June 13, 2023. Appellant reported lifting cardboard boxes when he felt a "pop" and pain in his left shoulder. Dr. DeCarlo noted findings on physical examination of left shoulder tenderness surrounding the posterior capsule, lateral deltoid muscle, and supraspinatus deltoid junction, tenderness at the acromioclavicular (AC) joint, positive impingement signs, and limited range of motion. He diagnosed traumatic injury, left shoulder sprain, rule out derangement. Dr. DeCarlo noted the findings and diagnosis were consistent with appellant's account of the injury and prescribed a shoulder brace. In a form report dated July 10, 2023, he noted an electromyogram and nerve conduction velocity (EMG/NCV) study revealed mild incidental findings of right carpal tunnel syndrome, right ulnar neuropathy, and cubital tunnel syndrome. Dr. DeCarlo diagnosed left shoulder impingement syndrome, left shoulder full-thickness rotator cuff tear, and biceps tendinosis and tenosynovitis. He recommended shoulder bracing and modified-duty work. In a duty status report (Form CA-17) dated June 26, 2023, Dr. DeCarlo diagnosed a left shoulder injury and provided restrictions. In a Form CA-17 dated July 10, 2023, he related that on June 13, 2023 appellant sustained an injury to his left shoulder. Dr. DeCarlo diagnosed left shoulder injury and returned appellant to work subject to restrictions commencing July 10, 2023.

In July 5, 2023 response to OWCP's development letter, appellant clarified that the date of injury was June 13, 2023. He noted that at the time of the injury he was lifting and moving empty cardboard boxes so that they could be transferred by a forklift. Appellant indicated that the cardboard boxes weighed approximately 50 pounds and as he lifted them, he felt a "pop" and dropped the boxes. He described the initial injury as a sharp burning feeling in his left shoulder. Appellant indicated that he did not have similar disability or symptoms before the injury.

An x-ray of the left shoulder dated July 6, 2023 revealed no acute osseous abnormality of the shoulder. A magnetic resonance imaging (MRI) scan of the left shoulder dated July 6, 2023 demonstrated a full-thickness tear of the supraspinatus tendon, infraspinatus and subscapularis tendinosis, long head biceps tendinosis and tenosynovitis, and mild glenohumeral joint osteoarthritis.

In a development letter dated July 24, 2023, OWCP requested that the employing establishment provide additional evidence, including comments from a knowledgeable supervisor regarding appellant's claim. It provided 30 days to respond.

OWCP received additional evidence. A handwritten Form CA-1 signed by appellant noted a date of injury of June 13, 2023. The cause of the left shoulder injury was noted as "lifting stacked cardboard."

OWCP received a witness statement from J.A., a supervisor, dated July 31, 2023, who noted that on July 13, 2023 from 10:30 a.m. to 11:15 a.m. he was waiting for appellant at his workstation for 30 to 45 minutes after paging him five times. He indicated that he did not see appellant at the automated package processing system (APPS) location at the time of the alleged injury at 10:45 a.m. J.A. noted that appellant was not seen and was nowhere to be found for two to three hours.

In an email dated July 31, 2023, C.E., appellant's supervisor, noted that appellant was not at the employing establishment on June 6, 2023 and was on leave all week. She indicated that on June 13, 2023 appellant was not performing his assigned duties, rather, he was driving a forklift. C.E. noted that prior to this time appellant was instructed not to drive a forklift but assist on the floor.

By decision dated August 21, 2023, OWCP denied appellant's claim, finding that the evidence of record was insufficient to establish that he was in the performance of duty when injured. Therefore, it concluded that the requirements had not been met to establish an injury as defined by FECA.

On October 9, 2023 appellant requested reconsideration and submitted new evidence.

In a statement dated September 19, 2023, appellant indicated that he was injured on June 13, 2023. He reported completing a hard copy of the Form CA-1 and gave it to his supervisor C.E. on June 13, 2013. Appellant indicated that he and C.E. sat in the attendance office together as she completed the electronic Form CA-1. He indicated that any typos made on the claim form were made by C.E. Appellant further noted that he was not on the employing establishment property on June 6, 2023 as he was on leave. He further indicated that he was not driving a forklift on June 13, 2023 as he was instructed by management a week before the incident not to use the

forklift. Appellant noted that on June 13, 2023 he was lifting a stack of empty boxes when he felt a sharp pain in his left shoulder. He reported his injury to C.E. and she arranged for someone to drive him to the doctor's office.

On September 21, 2023 Dr. DeCarlo noted that appellant worked as a mail handler for 37 years and on June 13, 2023 while lifting a stack of cardboard boxes weighing approximately 70 pounds he experienced pain and burning in his left shoulder. He noted an MRI scan of the left shoulder confirmed a full-thickness tear of the supraspinatus tendon. Dr. DeCarlo noted the MRI scan showed changes consistent with degenerative changes. He indicated that the left shoulder was compromised prior to this injury due to degenerative changes. Dr. DeCarlo noted that lifting heavy loads such as stacked cardboard boxes beyond the capacity of the rotator cuff tendons would place enough biomechanical force in and around the rotator cuff tendons to cause a tear. He diagnosed traumatic left shoulder full-thickness tear with retraction, left shoulder impingement syndrome, and biceps tendinosis and tenosynovitis. Dr. DeCarlo noted the mechanism of injury was lifting a heavy load with a nondominant upper extremity and opined that this caused a full-thickness rotator cuff tear.

By decision dated December 12, 2023, OWCP modified the August 21, 2023 decision, finding that appellant had not established that the incident occurred as alleged.

On February 6, 2024 appellant requested reconsideration and submitted new evidence.

In a witness statement dated January 30, 2024, T.C., appellant's co-worker, indicated that mail handlers' duties include working the postal pack on the platforms, which were used in every unit. He indicated that the APPS location where appellant worked used boxes for all mail that was dispatched. T.C. described that boxes were pulled out and lids were placed on them so that the boxes could be stacked. He noted that appellant and every other employee at the APPS location worked boxes eight hours per day, seven days a week.

In a statement dated January 30, 2024, appellant indicated that, on June 13, 2023, as group leader, he came in early to set up the boxes and while adjusting that stack of empty boxes he felt pain in his left shoulder radiating down to his elbow. In a statement dated February 1, 2024, he indicated that he and his supervisor C.E. communicated by cell phone for over a year and whenever she needed to contact him, she would text his cell phone. Appellant submitted photographs of boxes and text messages.

By decision dated February 7, 2024, OWCP denied modification of the December 12, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 *Id.*

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

To establish that, an injury occurred as alleged, the injury does not have to 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.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 is of great probative value and will stand unless refuted by strong or persuasive evidence.¹⁰

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that a traumatic injury occurred in the performance of duty on June 13, 2023, as alleged.

The record establishes that on June 13, 2023 appellant was performing his work duties, which included lifting cardboard boxes. Although the Form CA-1 submitted noted a date of injury of June 6, 2023, appellant explained in a statement dated September 19, 2023 that he completed a

⁴ *E.K.*, Docket No. 22-1130 (issued December 30, 2022); *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 *S.H.*, Docket No. 22-0391 (issued June 29, 2022); *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 *E.H.*, Docket No. 22-0401 (issued June 29, 2022); *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 *H.M.*, Docket No. 22-0343 (issued June 28, 2022); *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 *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

⁹ *K.H.*, Docket No. 22-0370 (issued July 21, 2022); *Betty J. Smith*, 54 ECAB 174 (2002); *see also L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹⁰ *See K.H., id.*; *M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

handwritten copy of the Form CA-1, which noted a date of injury of June 13, 2023 and gave it to his supervisor who completed the electronic Form CA-1. He provided a copy of the handwritten Form CA-1, which noted that he sustained an injury on June 13, 2023 when he was lifting stacked cardboard. T.C.'s January 30, 2024, witness statement confirmed that the APPS location where appellant worked utilized boxes for all mail that was dispatched. He noted that appellant and every other employee at the APPS location pulled out boxes and placed lids on them on a daily basis so that the boxes could be stacked. Appellant noted that at the time of the injury he was lifting and moving empty cardboard boxes so that they could be transferred by a forklift.

Additionally, appellant sought prompt medical care, first with Dr. Yadidi, on June 13, 2023, who diagnosed sprain of other specified parts of the left shoulder girdle. On June 6 and July 10, 2023 Dr. DeCarlo treated appellant for left shoulder pain that began at work on June 13, 2023 when he attempted to lift cardboard boxes and felt a "pop" and pain in his left shoulder. He diagnosed traumatic injury, left shoulder sprain rule out derangement and noted that the findings and diagnosis were consistent with appellant's account of the injury. Similarly, on September 21, 2023, Dr. DeCarlo further evaluated appellant's symptoms in relation to the June 13, 2023 work injury, noting that while lifting a stack of cardboard boxes weighing approximately 70 pounds he experienced pain and burning in his left shoulder. He diagnosed traumatic left shoulder full-thickness tear with retraction, left shoulder impingement syndrome, and biceps tendinosis and tenosynovitis.

The injuries appellant claimed are consistent with the facts and circumstances he set forth, a statement from his coworker, his course of action, and the medical evidence he submitted. Further, the history of the employment incident was confirmed by Dr. Yadidi's contemporaneous medical report and Dr. DeCarlo's medical reports. There is no evidence sufficient to cast serious doubt on appellant's allegations. The Board thus finds that appellant has met his burden of proof to establish that the June 13, 2023 employment incident occurred in the performance of duty, as alleged.¹¹

As appellant has established that the June 13, 2023 employment incident factually occurred as alleged, the question becomes whether the incident caused an injury in the performance of duty.¹² The Board, therefore, will set aside OWCP's February 7, 2024 decision and remand the case for consideration of the evidence of record with regard to whether appellant's injury occurred in the course and scope of his federal employment.¹³ After any further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that a traumatic injury occurred in the performance of duty on June 13, 2023, as alleged.

¹¹ See *M.A.*, Docket No. 19-0616 (issued April 10, 2020); *C.M.*, Docket No. 19-0009 (issued May 24, 2019).

¹² *Id.*

¹³ *S.M.*, Docket No. 16-0875 (issued December 12, 2017).

ORDER

IT IS HEREBY ORDERED THAT the February 7, 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: May 30, 2024
Washington, DC

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

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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