United States Department of Labor
Employees' Compensation Appeals Board

R.J., Appellant	)	
and	)	**Docket No. 24-0907**
	)	**Issued: November 12, 2024**
U.S. POSTAL SERVICE, PROCESSING & DISTRIBUTION CENTER, Grand Rapids, MI, 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
PATRICIA H. FITZGERALD, Deputy Chief Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On September 4, 2024 appellant filed a timely appeal from an April 18, 2024 merit decision and a June 5, 2024 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).[1] Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] Appellant submitted a timely request for oral argument before the Board. Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). Appellant asserted that oral argument was needed because the decision to deny his claim was based on insufficient evidence. The Board, in exercising its discretion, denies his request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied, and this decision is based on the case record as submitted to the Board.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUES

The issues are: (1) whether appellant has met his burden of proof to establish that a traumatic injury occurred on February 6, 2024 in the performance of duty, as alleged; and (2) whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On February 7, 2024 appellant, then a 65-year-old postal distribution clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 6, 2024 he sustained "unexplained pain and soreness in the right shoulder and neck area" while in the performance of duty. He stopped work on February 6, 2024. On the reverse side of the claim form, appellant's supervisor indicated that he was injured in the performance of duty, but contended that appellant had not established fact of injury or causation as the "occurrence was not witnessed."

On February 6, 2024 the employing establishment issued an Authorization for Examination or Treatment (Form CA-16).

In a February 6, 2024 visit summary and a duty status report (Form CA-17) of even date, Dr. Nicole M. Lundy, an osteopathic physician specializing in occupational medicine, related that on that day appellant felt irritation from his right shoulder down to his arm. She diagnosed right shoulder strain and prescribed work restrictions for a February 7, 2024 return to work.

On February 7, 2024 Dr. Lundy completed an attending physician's report, Part B of the Form CA-16. She again noted appellant's diagnosis of right shoulder strain. By checking a box marked "yes" Dr. Lundy indicated that appellant's diagnosis was caused or aggravated by employment activity.

In a development letter dated February 8, 2024, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence required, and provided a questionnaire for his completion. OWCP afforded appellant 60 days to submit the necessary evidence.

OWCP thereafter received February 6, 2024 treatment notes, wherein Dr. Lundy noted that appellant presented with pain in the right shoulder that radiated to the chest and back of neck. Dr. Lundy noted that he was working as a mail clerk, pushing mail, and that he denied prior injuries. She diagnosed strain of right shoulder.

In a February 14, 2024 visit summary, Dr. Julienne Little, an osteopath Board-certified in family medicine, noted that appellant could work with limited movement of the right shoulder. She also completed Forms CA-17 dated February 14 and 28, 2024 and diagnosed right shoulder trapezius strain. Dr. Little responded "yes" with regard to whether the diagnosis was due to an injury. In a February 28, 2024 visit summary, she diagnosed right shoulder and right trapezius strains, and related appellant's work restrictions.

In a follow-up letter dated March 13, 2024, OWCP advised appellant that it had conducted an interim review and determined that the evidence remained insufficient to establish his claim. It

noted that he had 60 days from its February 8, 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.

In a March 14, 2024 visit summary, Dr. Lundy related appellant's complaint that his condition was still painful. Appellant's diagnoses were noted as right shoulder and right trapezius strain. Dr. Lundy completed a March 14, 2024 Form CA-17 and continued appellant's work restrictions.

In a March 21, 2024 narrative statement, appellant further explained that on February 6, 2024 he was performing his daily work duties as an automation clerk when he began experiencing pain in his right neck and shoulder area. He noted that he was sweeping mail from the automation letter sorter into trays and lifting trays from the tray bread rack onto dock trucks to be transported to the tray sorter. Appellant explained that he was constantly lifting trays as they became full with mail, and also was sweeping or lifting mail into the trays continuously. He noted that he had performed his duties for 20-plus years, and this was the first time he experienced symptoms of this nature. Appellant indicated that he never had any previous pain, symptoms, or conditions in his neck or shoulder area on his right or left side.

In a March 28, 2024 visit summary, Dr. Lundy noted that appellant related intermittent pain. She diagnosed strain of right shoulder and right trapezius and indicated that his condition was work related. Dr. Lundy also completed a Form CA-17 and continued his work restrictions.

By decision dated April 18, 2024, OWCP denied appellant's traumatic injury claim. It found that appellant had not established that the claimed incident occurred on February 6, 2022, as alleged. OWCP, therefore, concluded that the requirements had not been met to establish an injury as defined by FECA.

Appellant subsequently submitted additional evidence, including an April 11, 2024 visit summary and a Form CA-17, wherein Dr. Lundy repeated her findings and conclusions.

On May 21, 2024 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 5, 2024, OWCP denied appellant's request for an oral hearing, finding that it was untimely filed. It further exercised its discretion and determined that the issue in the case could equally well be addressed through a request for reconsideration before OWCP along with the submission of new evidence supporting that he sustained an injury in the performance of duty.

LEGAL PRECEDENT -- ISSUE 1

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 filed within the applicable time

[3] *Id*.

limitation of FECA,[4] 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.[5] 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.[6]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. The first component is whether the employee actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused an injury.[7]

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. 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. 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 the employee's statements in determining whether a *prima facie* case has been established.[8] 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.[9]

ANALYSIS -- ISSUE 1

The Board finds that appellant has met his burden of proof to establish that a traumatic injury occurred on February 6, 2024 in the performance of duty, as alleged.

In support of his claim, appellant submitted a March 21, 2024 narrative statement in which he indicated that he was performing his daily work duties as an automation clerk on February 6, 2024, when he began experiencing pain in his right neck and shoulder area. He explained that, at the time of his injury, he was sweeping mail from the automation letter sorter into trays and lifting trays from the tray bread rack onto dock trucks to be transported to the tray sorter. As noted, an

[4] *See S.B.*, Docket No. 24-0710 (issued August 26, 2024); *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).

[5] *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).

[6] *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).

[7] *See A.H.*, Docket No. 22-0912 (issued October 26, 2023); *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[8] *T.T.*, Docket No. 22-0792 (issued October 18, 2022); *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

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

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.[10] Also, Dr. Lundy, in February 6, 2024 treatment notes related that appellant presented with pain in the right shoulder that radiated to the chest and back of neck and that he was pushing mail at work. As appellant has provided consistent and sufficiently-detailed statements, the Board finds that appellant has established that the employment incident occurred on February 6, 2024, as alleged.

As appellant has established that the February 6, 2024 employment incident occurred as alleged, the question becomes whether this incident caused an injury.[11] Thus, the Board shall set aside OWCP's April 18, 2024 decision and remand the case for consideration of the medical evidence. Following any further development as deemed necessary, OWCP shall issue a *de novo* decision addressing whether appellant has met his burden of proof to establish causal relationship between a diagnosed medical condition and the accepted employment incident.[12]

CONCLUSION

The Board finds that appellant has met his burden of proof to establish that the alleged employment incident occurred on February 6, 2024 in the performance of duty, as alleged.[13]

[10] *Supra* note 10.

[11] *See S.T.*, Docket No. 21-0317 (issued August 11, 2021); *B.S.*, Docket No. 19-0524 (issued August 8, 2019); *Willie J. Clements*, 43 ECAB 244 (1991).

[12] In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

[13] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *J.J.*, Docket No. 24-0724 (issued July 20, 2024); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the April 18 and June 5, 2024 decisions of the Office of Workers' Compensation Programs are reversed, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: November 12, 2024
Washington, DC

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

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

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