

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

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| J.C., Appellant |) | |
| |) | |
| and |) | Docket No. 24-0842 |
| |) | Issued: October 30, 2024 |
| U.S. POSTAL SERVICE, CHEYENNE POST OFFICE, Cheyenne, WY, Employer |) | |
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Appearances:
Gregory A. Hall, Esq., for the appellant¹
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. MCGINLEY, Alternate Judge

JURISDICTION

On August 14, 2024 appellant, through counsel, filed a timely appeal from an April 3, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic incident in the performance of duty on June 5, 2020, as alleged.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On June 23, 2020 appellant, then a 27-year-old city carrier assistant 1, filed a traumatic injury claim (Form CA-1) alleging that on June 5, 2020 at 3:00 p.m., she sustained a left knee injury as a result of “walking probably on [an] uneven surface” on Hilltop Avenue, while in the performance of duty. On the reverse side of the claim form, a supervisor checked boxes indicating that appellant was injured in the performance of duty, and that her knowledge of the facts about this injury agreed with the statements of appellant and/or witnesses.

In a report dated July 22, 2020, Dr. Jay Carson, an orthopedic surgeon, reviewed appellant’s history of injury. Appellant told Dr. Carson that on June 5, 2020, while at work, she was walking with a satchel weighing approximately 10 to 15 pounds or more and felt pain in her left knee. OWCP continued to receive progress reports from Dr. Carson. In a progress note dated August 26, 2020, Dr. Carson related that appellant’s left knee condition was improving; however, appellant still occasionally felt as though the knee wanted to shift or give way. In a report dated September 16, 2020, he related that during the prior week while at work appellant reinjured her left knee when it felt as though it was giving way as she descended stairs. Dr. Carson noted that he had reviewed a magnetic resonance imaging (MRI) scan of appellant’s left knee which revealed a lobulated ganglion cyst at the anterior horn of the lateral meniscus with no other obvious pathology.

In an October 5, 2020 development letter, OWCP informed appellant of the deficiencies of her claim. It advised her of the types of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

In a form report dated June 6, 2020, partially completed by appellant, she stated that on June 5, 2020 her knee began to hurt while walking at 3:00 p.m. In an intake form dated June 6, 2020, she stated that on June 5, 2020 she was walking down Hilltop Avenue at around 3:00 p.m. when she felt pain in her knee.

A duty status report (Form CA-17) dated June 6, 2020, noted that appellant described the alleged June 5, 2020 incident as occurring due to walking and feeling pain through her leg. A July 13, 2020 Form CA-17 noted that appellant’s left knee injury occurred on June 5, 2020 while waking.

In CA-17 forms dated July 29 and August 26, 2020, bearing an illegible signature, the date of injury was noted as June 5, 2020, and appellant’s diagnosis was listed as left knee sprain.

In a progress report dated October 28, 2020, Dr. Rita Barry, a Board-certified family practitioner, reviewed appellant’s history of injury. Appellant advised Dr. Barry that she injured her left knee on June 5, 2020 while walking up a hill at work. Dr. Barry provided an assessment of left knee pain, and left knee popliteal space cyst.

By decision dated November 2, 2020, OWCP denied appellant’s claim, finding that the medical evidence of record was insufficient to establish a firm diagnosis of a medical condition in connection with the accepted employment incident of June 5, 2020.

In reports dated November 11 and December 16, 2020, and January 13, 2021, Dr. Richard Torkelson, a Board-certified orthopedic surgeon, reviewed appellant’s history of injury. Appellant told Dr. Torkelson that she noted the onset of left knee pain on June 5, 2020, but denied any

specific injury or unusual activity other than duties of her federal employment. Dr. Torkelson noted that appellant related that her condition had worsened with flexion activities such as stairs, squatting, and prolonged sitting. He related appellant's diagnosis as acute lateral meniscus tear of the left knee, with associated synovial cyst.

On February 1, 2021 appellant requested reconsideration. On the same date, she submitted a claim for occupational disease (Form CA-2) alleging that she sustained swelling, pain, and a cyst of the left knee due to duties of her federal employment. Appellant stated that on June 5, 2020 she noticed swelling and left knee pain, noting that she realized that on her days off, the pain would be minimal, but worsened at work. She explained that she had previously filed a Form CA-1 for her left knee condition, but later determined she needed to file a Form CA-2. In an attached narrative statement dated January 23, 2021, appellant explained that on June 5, 2020 at around 3:00 p.m., while delivering mail with a satchel weighing approximately 10 to 20 pounds at Hilltop Avenue, her left knee began to hurt. Later that night, she noticed that her knee was swollen; and the next day, she was limping due to extreme pain. Appellant stated that no other injury occurred between June 5, 2020 and reporting the injury to her supervisor or physician. She stated that duties of her federal employment required walking many miles per day for six days per week while carrying a satchel that put weight unevenly on her body; constantly walking on uneven surfaces and hills with missteps; and entering and exiting her truck. These duties, appellant alleged, created excessive and disproportionate stress on her knees. After June 5, 2020, she noted that her left knee condition improved with fewer work duties, but her knee condition worsened on several occasions due to excessive use at work. In a letter dated December 3, 2020, appellant also directly responded to the questions contained in OWCP's October 5, 2020 development letter. She stated that on June 5, 2020 at around 3:00 p.m., while delivering mail with a satchel weighing approximately 10 to 20 pounds on Hilltop Avenue, her knee began to hurt. Later that night, appellant noticed that her knee was swollen; and the next day, she was limping due to extreme pain. She stated that she had no similar disability or symptoms prior to June 5, 2020. Appellant further stated that she was unsure whether to file her claim as an occupational disease or traumatic injury, explaining that it seemed to her that both definitions might apply as her physicians had advised that duties of her employment exacerbated an injury she sustained on June 5, 2020. She noted that while there was a time and place of injury, her left knee condition was also produced by repeated exposure to work duties; and that she was leaning towards filing the claim as an occupational disease.

In a letter dated January 22, 2020, Sandra Smith, a union official, stated that on June 5, 2020 appellant had an on-the-job injury. She noted that on June 6, 2020 she was present when a supervisor advised appellant to file a Form CA-1 for the alleged June 5, 2020 injury. The union official stated that it was not until recently that appellant was told to complete a Form CA-2 for her claim, as the Form CA-1 was not the correct form to use for the circumstances of her claim.

In progress reports dated February 11, March 9, April 8, and May 6, 2021, Dr. Torkelson reiterated appellant's history of injury and diagnosis.

By decision dated May 7, 2021, OWCP modified its prior decision finding that appellant had established a firm medical diagnosis of a lateral meniscus tear of the left knee with an associated synovial cyst in connection with the accepted June 5, 2020 employment incident. However, her claim remained denied on the basis that she had not submitted sufficient medical evidence to establish causal relationship between the accepted June 5, 2020 employment incident and her diagnosed left knee condition.

In a letter dated March 7, 2022, Dr. Jean Basta, a Board-certified orthopedic surgeon, reviewed appellant's history of injury. She noted that appellant began work at the employing establishment in February 2020, and that duties of her federal employment included sorting, casing, and delivering mail; walking miles along her delivery route while carrying a mail satchel; walking up and down stairs and over uneven surfaces; entering and exiting her truck; and frequent standing, walking, crouching, climbing, and bending. Dr. Basta further noted that on June 5, 2020, appellant experienced left knee pain that began while delivering mail at work, which worsened throughout that workday and on days thereafter. She opined that walking several miles per day while carrying a mail satchel, climbing up and down stairs, bending and twisting, and entering and exiting a mail truck could contribute to worsening injury and symptoms.

On April 7, 2022 appellant, through counsel, requested reconsideration.

OWCP thereafter received additional reports from Dr. Basta. On May 19, 2021 appellant underwent a left knee arthroscopy with chondroplasty of the medial femoral condyle, and debridement of anterolateral and medial meniscus cysts, in order to treat diagnosed conditions of anterolateral synovial and small medial meniscus cysts and chondromalacia of the patella. Progress reports were received from Dr. Basta dated May 18, July 2, and August 3, 2021.

By decision dated July 5, 2022, OWCP denied modification of its prior decision.

In a report dated August 4, 2022, Dr. Leslie Harrington, Board-certified in physical medicine and rehabilitation, reviewed appellant's history of injury. Appellant advised Dr. Harrington that on June 5, 2020, while delivering mail and carrying a satchel weighing between 20 and 30 pounds, she walked on an uneven surface of rocks and grass, mis stepped and twisted her left knee. She concluded that based on appellant's history of sudden onset of pain in the left knee occurring while she was at work, her knee pain appeared to be a work-related injury, however, she would have to obtain her prior records to clarify diagnosis, imaging, surgical interventions, and causality. In a progress report dated October 25, 2022, Dr. Harrington diagnosed a left knee injury that occurred while carrying mail at work on June 5, 2020.

On February 28, 2023 Dr. Basta reviewed additional medical records and noted that appellant had undergone a second left knee arthroscopy on April 20, 2022. Appellant's postoperative diagnoses were listed as left knee meniscal capsula tear, loose cartilage body, and grade 1 medial femoral condyle lesion.

In a note dated March 5, 2023, Dr. Harrington reviewed appellant's history of injury. She advised Dr. Harrington that on June 5, 2020, she experienced a sudden onset of pain. Dr. Harrington opined that twisting her knee while carrying a mail satchel on June 5, 2020 caused sufficient force resulting in her left knee meniscal tear and associated pathology. She further opined that appellant had no previous problems with her left knee, her timely onset of symptoms, physical examination, diagnostic tests, including an MRI scan, confirmed this diagnosis.

On May 3, 2023 appellant, through counsel, requested reconsideration.

On May 18, 2023 OWCP referred appellant to Dr. Qing-min Chen, a Board-certified orthopedic surgeon, for a second opinion evaluation regarding causal relationship between the claimed June 5, 2020 employment incident and her diagnosed left knee conditions.

In a second opinion report dated June 30, 2023, Dr. Chen reviewed appellant's history of injury. He reported that on June 5, 2020, while at work delivering mail and walking on an uneven surface, she tripped and fell, twisting her left knee. Dr. Chen further reported that appellant stated that she had a twisting injury while walking on an uneven surface, but that was incongruent or inconsistent with her medical records, as she had previously reported no specific injury or unusual activity other than work. He noted diagnoses of left knee medial meniscus and lateral meniscus synovial cyst or ganglion cyst, not work related; and left knee medial femoral condyle cartilage flap, not work related.

By decision dated July 10, 2023, OWCP denied modification of its prior decision.

In a declaration dated November 1, 2023, appellant again described the circumstances of the June 5, 2020 incident. She stated that on that date, while delivering mail, she stepped and landed awkwardly while negotiating uneven ground and twisted her left knee. Appellant was carrying her mail satchel and stated that it probably affected her balance.

In a report dated September 30, 2023, Dr. Harrington disputed factual assertions in Dr. Chen's June 30, 2023 report. She noted that appellant had consistently reported that she was walking on an uneven surface while delivering mail when she injured her knee on June 5, 2020. Dr. Harrington further noted that appellant had previously noted that she was unsure how to phrase what had occurred to her knee on that date, as English was not her first language. Appellant told Dr. Harrington that on June 5, 2020 she was walking on rocks and grass when her left knee twisted. She further related to Dr. Harrington that she was perplexed and concerned as to why Dr. Chen stated that she had told him that she tripped and fell on June 5, 2020, as she did not tell him that she had tripped and fallen. Dr. Harrington reviewed the history of injury as related in appellant's medical records and contended that these histories of injury were consistent with twisting her knee when walking on an uneven surface while delivering mail on June 5, 2020.

On January 19, 2024 appellant, through counsel, requested reconsideration.

By decision dated April 3, 2024, OWCP modified the prior denial of her claim from one based on causal relationship to a denial that she had not established that the alleged June 5, 2020 incident occurred at the time and place, and in the manner alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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,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

³ 5 U.S.C. § 8101 *et seq.*

⁴ *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *Joe D. Cameron*, 41 ECAB 153 (1989).

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 must first be determined whether fact of injury has been established.⁷ Fact of injury consists of two components that must be considered in conjunction with one another. 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.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.⁹

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.¹⁰ 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.¹¹ 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.¹²

ANALYSIS

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on June 5, 2020, as alleged.

Appellant has consistently described that she developed knee pain on June 5, 2020 while walking her mail route. As noted, an employee's statement alleging that an injury occurred at a

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

⁶ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *L.T.*, Docket No. 18-1603 (issued February 21, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *M.F.*, Docket No. 18-1162 (issued April 9, 2019); *Charles B. Ward*, 38 ECAB 667, 67-71 (1987).

¹¹ *Betty J. Smith*, 54 ECAB 174 (2002); *L.D.*, Docket No. 16-0199 (issued March 8, 2016).

¹² *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

given time and place, and in the manner alleged is of great probative value and will stand unless refuted by strong or persuasive evidence.¹³

On June 23, 2020 appellant filed a Form CA-1 alleging a June 5, 2020 traumatic injury arising from walking on uneven surfaces while delivering mail in the performance of duty. In forms dated June 6, 2020, she related that on June 5, 2020, her knee began to hurt while walking at 3:00 p.m. on Hilltop Avenue. In a narrative statement dated January 23, 2021, appellant explained that on June 5, 2020 at around 3:00 p.m., her left knee began to hurt while she was delivering mail with a satchel weighing approximately 10 to 20 pounds on Hilltop Avenue. Later that night, she noticed that her knee was swollen; and the next day, she was limping due to extreme pain. In a declaration dated November 1, 2023, appellant again described the circumstances of the June 5, 2020 incident. She stated that on that date, while delivering mail, she stepped and landed awkwardly while negotiating uneven ground and twisted her left knee. Appellant was carrying her mail satchel and stated that it probably affected her balance.

Appellant's treating physicians, Drs. Carson, Barry, Torkelson, Basta, and Harrington, all recounted that appellant experienced knee pain while delivering mail on June 5, 2020. While Dr. Chen, OWCP's second opinion physician, related that appellant had fallen on June 5, 2020, based on an inconsistent history of injury, in a report dated September 30, 2023, Dr. Harrington disputed Dr. Chen's report. She noted that appellant had consistently reported that she was walking on an uneven surface while delivering mail when she injured her knee on June 5, 2020. Dr. Harrington further noted that appellant had informed her that she was unsure how to phrase what had occurred to her knee on that date, as English was not her first language. She explained that appellant informed her that on June 5, 2020, she was walking on rocks and grass when her left knee twisted.

The Board further notes that in a letter dated January 22, 2020, Ms. Smith, a union official, stated that on June 5, 2020 appellant had an on-the-job injury. She noted that on June 6, 2020 she was present when a supervisor advised appellant to file a Form CA-1 for the alleged June 5, 2020 injury.

The Board thus finds that the evidence of record does not cast serious doubt that the June 5, 2020 employment incident occurred, as alleged. The evidence establishes that appellant was walking on uneven ground on June 5, 2020, delivering mail, when she stepped awkwardly, and her left knee twisted. Therefore, appellant has met her burden of proof to establish the employment incident occurred in the performance of duty on June 5, 2020, as alleged.¹⁴

As appellant has established that an incident occurred in the performance of duty on June 5, 2020 as alleged, the question becomes whether the incident caused an injury.¹⁵ The case must, therefore, be remanded for consideration of the medical evidence of record.¹⁶ After this, and other such further development as deemed necessary, OWCP shall issue a *de novo* decision addressing

¹³ *T.V.*, Docket No. 22-0968 (issued October 23, 2023); *D.F.*, Docket No. 21-0825 (issued February 17, 2022); *see also M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹⁴ *E.L.*, Docket No. 24-0341 (issued May 10, 2024).

¹⁵ *E.L.*, *id.*; *D.F.*, *supra* note 13; *M.A.*, Docket No. 19-0616 (issued April 10, 2020).

¹⁶ *D.F.*, *id.*; *L.D.*, Docket No. 16-0199 (issued March 8, 2016); *Betty J. Smith*, 54 ECAB 174 (2002).

whether appellant has met his burden of proof to establish an injury causally related to the accepted June 5, 2020 employment incident.¹⁷

CONCLUSION

The Board finds that appellant has met her burden of proof to establish a traumatic incident in the performance of duty on June 5, 2020, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the April 3, 2024 decision of the Office of Workers' Compensation Programs is reversed, and the case is remanded to OWCP for proceedings consistent with this decision of the Board.

Issued: October 30, 2024
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

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

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

¹⁷ The Board notes that OWCP has not issued a final decision regarding appellant's occupational injury claim.