

FACTUAL HISTORY

On January 14, 2020 appellant, then a 30-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that on that date he injured his left arm while in the performance of duty. He explained that he was lifting a tub of flats onto a stool when he felt pulling and pain in his left arm. Appellant did not stop work. On the reverse side of the claim form the employing establishment indicated that appellant was injured on January 14, 2020 while in the performance of duty, and it stated that its knowledge of the facts of the injury agreed with appellant's statements. It further indicated, however, that it controverted the claim due to fact of injury.

A January 14, 2020 medical narrative report indicated that appellant was seen by Dr. Dale Bortz, Jr., an osteopath Board-certified in family medicine. Dr. Bortz noted that appellant complained that on that date he had injured his left shoulder when he picked up a tub of mayonnaise. He diagnosed an unspecified sprain of the left shoulder joint and provided discharge instructions for a shoulder sprain and muscle strain. Dr. Bortz also completed a duty status report (Form CA-17) on January 14, 2020, indicating that appellant injured his left side on that date when he lifted a tub and felt a pull in his left arm, and that his history of injury was consistent with this description. Clinical findings included left shoulder tenderness upon palpation. Dr. Bortz diagnosed a left shoulder sprain and listed appellant's work restrictions.

In a January 23, 2020 development letter, OWCP advised him of the type of factual and medical evidence necessary to establish his claim and attached a questionnaire for his completion. It afforded him 30 days to submit the requested evidence.

A January 23, 2020 Form CA-17 report by a certified physician assistant indicated that appellant was injured on January 14, 2020 when he lifted a tub and felt a pull in his left arm, and that his history of injury was consistent with this description. Clinical findings included left shoulder tenderness upon palpation and with range of motion, and appellant was diagnosed with a left shoulder sprain. The report additionally listed appellant's work restrictions.

The employing establishment controverted the claim in a February 3, 2020 letter, indicating that, while appellant alleged in his traumatic injury form that he injured his left shoulder while lifting a tub of flat mail onto a stool; however, his medical documentation from January 14, 2020 stated that he injured his left side when he picked up a tub of mayonnaise. It contended that this discrepancy casted serious doubt on the validity of appellant's claim.

On January 29, 2020 appellant completed OWCP's development questionnaire. He stated that, as he was lifting a tub of flat mail he felt a pull in his arm, causing him to drop the tub onto a stool. Appellant indicated that, after the incident, he felt light pain and discomfort in his left arm and he informed his supervisor of what occurred. He noted that he did not have any similar disabilities or symptoms prior to his injury.

In a January 30, 2020 attending physician's report (Form CA-20) from Dr. Bortz indicated that on January 14, 2020 appellant was lifting a tub of mail when he experienced left shoulder pain. He noted that there was no history or evidence of a concurrent or preexisting condition. Dr. Bortz diagnosed left shoulder sprain/strain, and noted that appellant's condition was caused or aggravated by the alleged January 14, 2020 employment incident. He also noted that appellant could return to full-time regular-duty work.

A January 30, 2020 Form CA-17 report from Dr. Bortz indicated that appellant was injured on January 14, 2020 when he lifted a tub and felt a pull in his left arm, and that his history of injury was consistent with this description. Dr. Bortz diagnosed a left shoulder sprain and advised appellant to resume full-time regular-duty work.

By decision dated February 24, 2020, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the event occurred as he described. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

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 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 must first be determined whether fact of injury has been established.⁷ First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal 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

³ *Supra* note 1.

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).

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 *R.B.*, Docket No. 17-2014 (issued February 14, 2019); *B.F.*, Docket No. 09-0060 (issued March 17, 2019); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁸ *S.F.*, Docket No. 18-0296 (issued July 26, 2018); *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁹ *A.D.*, Docket No. 17-1855 (issued February 26, 2018); *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 7.

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. 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.¹¹

ANALYSIS

The Board finds that appellant has met his burden of proof to establish that the January 14, 2020 incident occurred in the performance of duty, as alleged.

Appellant alleged on his January 14, 2020 claim form that on that date he injured his left arm while lifting a tub of flats when he felt pulling and pain in his left arm. The employing establishment indicated that appellant was injured on January 14, 2020 in the performance of duty, and it stated that its knowledge of the facts of the injury agreed with the statements of appellant. Appellant's January 29, 2020 statement responding to OWCP's questionnaire included that he was injured while lifting a tub of flats onto a stool when he felt a pull in his arm. Additionally, the medical form reports submitted by appellant provided a consistent history of injury, that appellant was injured on January 14, 2020 when he lifted a tub at work and felt a pull in his left arm.

While the January 14, 2020 narrative report from Dr. Bortz noted that appellant related that on that date he injured his left shoulder when he picked up a tub of mayonnaise, the Board finds that this one inconsistency is insufficient to cast serious doubt as to whether the specific event or incident occurred at the time, place, and in the manner alleged,¹² which is that he lifted some object while in the performance of duty. Dr. Bortz subsequently corrected the mechanism of injury and reported on January 30, 2020 that appellant was lifting a tub of mail at work when he sustained his left shoulder injury. Appellant otherwise consistently stated in his claim form, statement to OWCP, and statements to medical providers that he was injured on January 14, 2020 when he lifted a tub and felt a pull in his left arm. 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.¹³ Additionally, appellant timely reported lifting a tub of mail to his supervisor and filed his traumatic injury claim form on January 14, 2020, the date of his injury, and obtained medical treatment on that date as well. Therefore, the Board finds that appellant has met his burden of proof to establish that the January 14, 2020 employment incident occurred when the appellant lifted a tub of flats onto a stool as alleged.

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

¹¹ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *D.B.*, *supra* note 8.

¹² *See K.F.*, Docket No. 18-0485 (issued February 18, 2020).

¹³ *Supra* note 11.

As appellant has established that the January 14, 2020 employment incident occurred as alleged, consideration of the medical evidence is necessary.¹⁴ Therefore, the case will be remanded to OWCP to evaluate the medical evidence of record and determine whether appellant has met his burden of proof to establish a medical condition causally related to the accepted January 14, 2020 employment incident.¹⁵ Following this and other such 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 the January 14, 2020 incident occurred in the performance of duty on January 14, 2020, as alleged. The Board further finds that the case must be remanded to determine whether appellant sustained a medical condition causally related to the accepted January 14, 2020 employment incident.

ORDER

IT IS HEREBY ORDERED THAT the February 24, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: February 17, 2021
Washington, DC

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

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

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

¹⁴ *Q.T.*, Docket No. 19-1693 (issued March 27, 2020).

¹⁵ *Id.*