

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

L.H., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Ada, OK, Employer**

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**Docket No. 10-2156
Issued: July 19, 2011**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On August 26, 2010 appellant filed a timely appeal from a May 24, 2010 merit decision of the Office of Workers' Compensation Programs denying her claim for an employment injury. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained an injury in the performance of duty on April 5, 2010, as alleged.

On appeal, appellant described how her injury occurred, discussed her subsequent medical treatment and indicated that she sought appointments with her doctor.²

¹ 5 U.S.C. § 8101 *et seq.*

² On appeal, appellant provides a description as to how the alleged incident occurred. She also submitted new evidence after the Office issued its May 24, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 5 U.S.C. § 501.2(c)(1).

FACTUAL HISTORY

On April 8, 2010 appellant, then a 73-year-old modified rural carrier, filed a traumatic injury claim alleging that, on April 5, 2010, while delivering a message to a rural carrier case, she tripped on a platform and fell, sustaining injury to her back, shoulder and neck. The employing establishment stated that it was unaware of the alleged incident until it was reported by another employee. By letter dated April 19, 2010, Tracy Treat, an employee, controverted the claim on behalf of the employing establishment. She noted that on April 6, 2010 appellant received a “preliminary no work available interview.” Ms. Treat advised that appellant only worked three hours a day for a few days a week due to restrictions from another claim, File No. xxxxxx079. On April 7, 2010 appellant reported the alleged injury but indicated that she did not want to file a claim at that time. Ms. Treat noted that appellant completed the form the next day, but there were no witnesses to the injury.

By letter dated April 16, 2010, OWCP informed appellant that further information was necessary to develop her claim and provided her 30 days to submit additional evidence.

Appellant submitted an April 5, 2010 routing slip, noting that on April 5, 2010 at approximately 12:30 p.m. she tripped over a “Rt 4 case,” fell and hurt her left arm below the elbow and twisted her neck, upper back and left shoulder. She also submitted a work status report from the Ellis Clinic, dated May 6, 2010. The report, which contains an illegible signature, advised that appellant had an injury on April 5, 2010 and was under active treatment at the clinic by Dr. Tom Ewing, an osteopath. It indicated that appellant was temporarily totally disabled.

By decision dated May 24, 2010, OWCP denied appellant’s claim for compensation finding that she did not establish fact of injury. It found that she did not establish that the incident occurred at the time, place and in the manner alleged or that no injury resulted therefrom.

LEGAL PRECEDENT

An employee who claims benefits under FECA has the burden of establishing the essential elements of 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 limitation; that an injury was sustained while in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ 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.⁴

³ C.S., Docket No. 08-1585 (issued March 3, 2009).

⁴ S.P., 59 ECAB 184 (2007).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether a fact of injury has been established.⁵

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.⁶ 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.⁷

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.⁸ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁹ 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 sufficient doubt on an employee's statements in determining whether a *prima facie* case has been established.¹⁰ However, 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

Causal relationship is a medical issue and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on whether there is a causal relationship between the employee's diagnosed condition and the compensable employment factors. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.¹²

ANALYSIS

Appellant alleged that she sustained an injury on April 5, 2010 when she tripped over a case of mail and fell. The employing establishment controverted the claim, noting that there were no witnesses, that appellant delayed filing a claim and that she filed the claim after

⁵ *B.F.*, Docket No.09-60 (issued March 17, 2009).

⁶ *D.B.*, 58 ECAB 464 (2007).

⁷ *D.G.*, 59 ECAB 734 (2008); *C.B.*, Docket No.08-1583 (issued December 9, 2008).

⁸ *M.H.*, 59 ECAB 461 (2008); *George W. Glavis*, 5 ECAB 363, 365 (1953).

⁹ *S.P.*, *supra* note 4; *Gus Mavroudis*, 9 ECAB 31, 33 (1956).

¹⁰ *Barbara R. Middleton*, 56 ECAB 634 (2005).

¹¹ *S.P.*, *supra* note 4; *Wanda F. Davenport*, 32 ECAB 552, 556 (1981).

¹² *I.J.*, 59 ECAB 408 (2008).

receiving a preliminary no work available interview. The Board finds that the evidence of record is sufficient to establish that the work incident occurred at the time, place and in the manner alleged. Appellant alleged that, while delivering a message to a rural carrier case, she tripped on a platform and fell. Her statement is entitled to probative value and will stand unless refuted by strong or persuasive evidence.¹³ The evidence is not sufficient to rebut appellant's statement. An injury does not have to be confirmed by witnesses in order to establish the fact that an employee sustained an injury in the performance of duty.¹⁴ Furthermore, the delay of two days before reporting the incident to her supervisor and three days before filing a claim is not sufficient delay to counter the weight given to her statement of injury. The Board notes that there is a routing slip with a date stamp by the employing establishment on April 5, 2010 in which appellant noted that she tripped over an "Rt 4 case" and fell at approximately 12:30 p.m. sustaining injury to her left arm below the elbow, neck, upper back and left shoulder. Accordingly, the Board finds that the evidence is sufficient to establish an employment incident on April 5, 2010 as alleged.

The Board finds, however, that the medical evidence is not sufficient to establish that an injury resulted from the April 5, 2010 work incident. The only medical evidence in the record at the time of OWCP's decision was a work status report from the Ellis Clinic. The document contains no firm diagnosis of a medical condition or a description as to how the injury occurred. It does not contain a legible signature, so it is impossible to determine whether the document was prepared by a physician. As this document lacks proper identification, the Board finds that it does not constitute probative medical evidence.¹⁵

Appellant has not submitted medical evidence sufficient to show that an injury resulted from the accepted employment incident. The Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to the Office within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) 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 that she sustained an injury in the performance of duty on April 5, 2010, as alleged.

¹³ *S.P.*, *supra* note 4.

¹⁴ *John Rode, Jr.*, Docket No. 04-1923 (issued February 16, 2006).

¹⁵ *See Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 24, 2010 is affirmed as modified.

Issued: July 19, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board