

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

C.G., Appellant)

and)

U.S. POSTAL SERVICE, NORTH TEXAS)
PERFORMANCE & DISTRIBUTION CENTER,)
Coppell, TX, Employer)

**Docket No. 11-1897
Issued: April 24, 2012**

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

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 17, 2011 appellant filed an appeal from a July 7, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her claim. 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.

ISSUE

The issue is whether appellant met her burden of proof to establish that her right knee condition is causally related to factors of her federal employment.

FACTUAL HISTORY

On May 13, 2011 appellant, then a 50-year-old mail handler, filed an occupational disease claim alleging that her right knee started hurting while at work. She noted a history of a

¹ 5 U.S.C §§ 8101-8193.

torn meniscus in her right knee of which she first became aware in January 2011. Appellant did not stop work but visited her physician. She stated that her physician prescribed a magnetic resonance imaging (MRI) scan and advised her to wear a knee brace, use a cold pack and take medication. No evidence was submitted with the claim.

In a May 31, 2011 letter, OWCP advised appellant of the deficiencies in her claim. It asked her to provide a clear description of how her claimed injury occurred, including a listing of the job activities that she believed contributed to her condition together with a description of how she performed such activities. OWCP noted that it was not clear if appellant was claiming an occupational disease or a traumatic injury. It provided her with its definitions of these terms and asked her to clarify the nature of injury claimed. OWCP also asked appellant to submit medical evidence in support of the claim. No further evidence was received.

By decision dated July 7, 2011, OWCP denied appellant's claim on the grounds that the evidence submitted was not sufficient to establish the factual component of fact of injury as the evidence did not support that the injury or events occurred as alleged.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing 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 and that an injury² was sustained in the performance of duty. These are the essential elements of each compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

Whether an employee actually sustained an injury in the performance of duty begins with an analysis of whether fact of injury has been established.⁴ To establish fact of injury in an occupational disease claim, an employee must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁵

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 subsequent course of action. In determining whether a *prima facie* case

² OWCP's regulations define an occupational disease or illness as a condition produced by the work environment over a period longer than a single workday or shift. 20 C.F.R. § 10.5(q). OWCP's regulations define a traumatic injury as a condition of the body caused by a specific event or incident or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected. 20 C.F.R. § 10.5(ee).

³ See *J.C.*, Docket No. 09-1630 (issued April 14, 2010). See also *Ellen L. Noble*, 55 ECAB 530 (2004).

⁴ See *M.V.*, Docket No. 10-1169 (issued December 17, 2010); *S.P.*, 59 ECAB 184, 188 (2007).

⁵ *Roy L. Humphrey*, 57 ECAB 238, 241 (2005).

has been established, such circumstances as late notification of injury, lack of confirmation of injury and failure to obtain medical treatment may, if otherwise unexplained, cast substantial doubt on a claimant's statements. The employee has not met his burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁶

ANALYSIS

While appellant attributed her right knee condition to her federal employment, she did not describe what aspect of her federal employment caused or aggravated a torn meniscus in her right knee. In a May 31, 2011 letter, OWCP requested that a statement describing how her claimed injury occurred, including a listing of the job activities that she believed contributed to her condition with a description of how she performed such duties. It also asked that appellant clarify if her claim was for a traumatic injury or an occupational disease. Appellant did not respond.

A statement describing particular employment factors or incidents that caused or contributed to the claimed right knee condition is crucial to appellant's claim. As noted her burden of proof includes the submission of a factual statement identifying those employment factors believed to have caused or contributed to her claimed condition. Appellant's assertion that her right knee started hurting while she was at work does not support that a particular workplace activity or incident caused or aggravated a right knee condition. There also is no evidence that she sought medical treatment for her knee condition or that a physician made a firm diagnosis in this case. There is no opinion by a physician on the issue of causal relation.

Appellant had not submitted any evidence clarifying how particular work factors caused or aggravated the claim condition. The Board finds that she has not established that she sustained a right knee condition in the performance of duty.⁷

On appeal, appellant asserted that she did not respond to OWCP's request because of the conflicting schedules of personnel at work and her physician. She submitted new evidence and the Board to reconsider her claim, but the Board cannot consider new evidence on appeal. Review is limited to the evidence of record at the time of OWCP's final decision.⁸

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP 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 did not meet his burden of proof to establish that she sustained an injury in the performance of duty, as alleged.

⁶ *Betty J. Smith*, 54 ECAB 174 (2002).

⁷ Until appellant establishes work factors alleged to have caused her claimed condition, it is not necessary to consider medical evidence regarding causal relationship. *See S.P.*, 59 ECAB 184 (2007).

⁸ *See* 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the July 7, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 24, 2012
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

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

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board