United States Department of Labor
Employees' Compensation Appeals Board

L.F., Appellant	)	
and	)	**Docket No. 13-293**
	)	**Issued: April 8, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Tipton, IN, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On November 15, 2012 appellant filed a timely appeal of a May 23, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) 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 a traumatic injury while in the performance of duty on April 6, 2012.

FACTUAL HISTORY

On April 17, 2012 appellant, then a 40-year-old rural carrier associate, filed an occupational disease claim alleging that she was involved in a rear-end collision with a privately-owned vehicle on April 6, 2012. She sustained injuries to her head, neck, hands, wrists, arms,

[1] 5 U.S.C. § 8101 *et seq.*

shoulders and back. Appellant stopped work on April 6, 2012 and did not return. The employing establishment did not dispute her contention that the automobile accident occurred while she was in the performance of duty.[2]

OWCP advised appellant in an April 23, 2012 letter that additional evidence was needed to establish her claim. It gave her 30 days to submit a statement detailing the employment incident that occurred on April 6, 2012 and a report from a qualified physician explaining how this event caused or contributed to a diagnosed injury.

A May 11, 2012 work status note containing an illegible signature placed appellant on light duty and prohibited lifting of items weighing over 20 pounds for one month.

By decision dated May 23, 2012, OWCP denied appellant's claim, finding the evidence insufficient to establish that an employment incident occurred on April 6, 2012 as alleged.

LEGAL PRECEDENT

An employee seeking compensation under FECA has the burden of establishing the essential elements of his or her claim by the weight of reliable, probative and substantial evidence,[3] including that he or she is an "employee" within the meaning of FECA and that he or she filed his or her claim within the applicable time limitation.[4] The employee must also establish that he or she sustained an injury in the performance of duty as alleged and that his or her disability for work, if any, was causally related to the employment injury.[5]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. 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. Second, the employee must submit medical evidence to establish that the employment incident caused a personal injury.[6]

An employee's statement 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.[7] Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and his or her

[2] In an April 20, 2012 letter, OWCP informed appellant that the circumstances of her case suggested that her injury may have been caused by a responsible third party and that she may be subject to FECA's subrogation provisions. *See* 5 U.S.C. §§ 8131-8132; 20 C.F.R. §§ 10.705-10.719.

[3] *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

[4] *R.C.*, 59 ECAB 427 (2008).

[5] *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

[6] *T.H.*, 59 ECAB 388 (2008).

[7] *R.T.*, Docket No. 08-408 (issued December 16, 2008); *Gregory J. Reser*, 57 ECAB 277 (2005).

subsequent course of action. An employee has not met his or her burden in 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. Circumstances such 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 doubt on an employee's statement in determining whether a *prima facie* case has been established.[8]

Rationalized medical opinion evidence is generally required to establish causal relationship. The opinion of the physician must be based on a complete factual and medical background, 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 claimant.[9]

ANALYSIS

The Board finds that appellant sufficiently established that she was involved in a rear-end collision with a privately-owned vehicle on April 6, 2012. Appellant stopped work immediately and filed a traumatic injury claim on April 17, 2012. Moreover, the employing establishment did not challenge the fact that this collision occurred while appellant was in the performance of duty. As noted above, an employee's statement alleging that an incident 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. In view of the totality of the evidence, the Board finds that an employment incident occurred on April 6, 2012.

The Board further finds that the medical evidence did not sufficiently establish that the accepted April 6, 2012 employment incident caused or contributed to a diagnosed condition. A medical issue such as causal relationship can only be resolved through the submission of probative medical evidence from a physician.[10] In this case, a May 11, 2012 work status note containing an illegible signature cannot constitute competent medical evidence because one is unable to determine whether the individual who composed the note was a qualified physician as defined under 5 U.S.C. § 8101(2).[11] In the absence of rationalized medical opinion evidence, appellant failed to discharge her burden of proof.

Appellant contends on appeal that she provided additional medical evidence. The case record does not support her assertion. Appellant also submits new evidence on appeal. However, the Board lacks jurisdiction to review evidence for the first time on appeal.[12]

[8] *Betty J. Smith*, 54 ECAB 174 (2002).

[9] *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

[10] *Gloria J. McPherson*, 51 ECAB 441 (2000); *Charley V.B. Harley*, 2 ECAB 208, 211 (1949).

[11] *R.M.*, 59 ECAB 690, 693 (2008). The Board also points out that this note neither diagnosed an injury nor supported causal relationship.

[12] 20 C.F.R. § 501.2(c).

Appellant may submit new evidence or argument as part of a formal 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 establish that she sustained a traumatic injury while in the performance of duty on April 6, 2012.

ORDER

IT IS HEREBY ORDERED THAT the May 23, 2012 decision of the Office of Workers' Compensation Programs be affirmed.

Issued: April 8, 2013
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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