United States Department of Labor
Employees' Compensation Appeals Board

D.T., Appellant	)	
and	)	**Docket No. 13-41**
	)	**Issued: February 25, 2013**
U.S. POSTAL SERVICE, POST OFFICE, Bayonne, NJ, Employer	)	

Appearances:
Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

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

JURISDICTION

On October 5, 2012 appellant, through her attorney, filed a timely appeal from a June 26, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury claim. 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 this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that she sustained a traumatic injury in the performance of duty on December 7, 2011.

FACTUAL HISTORY

On December 9, 2011 appellant, then a 47-year-old letter carrier, filed a traumatic injury claim alleging that on December 7, 2011 she sustained a possible right knee torn meniscus when she opened an office door and her leg gave out. A witness statement by Vincent A. Virga stated

[1] 5 U.S.C. § 8101 *et seq.*

that appellant walked in and was "grimacing in pain." Mr. Virga recommended that she sit down and call her supervisor immediately. Appellant signed the CA-1 form on December 9, 2011; her supervisor stated that he received the form on December 12, 2011.

In a letter dated December 12, 2011, Patrick Roach, the postmaster, controverted appellant's claim. He noted that appellant had refused to give a written statement regarding the matter. Appellant went home early on December 7, 2011 after complaining to her supervisors that her knee was bothering her. At that time, she did not want to report anything, just that it did not feel well. Mr. Roach stated that, the next day, appellant came to work and left early saying the same thing. He did not become aware of the CA-1 filing until Monday, December 12, 2011 when he found an envelope in his mailbox that was left at the retail window on Saturday, December 10, 2011 by appellant's husband. Mr. Roach noted that all accidents were to be reported immediately and that this came to his attention five days after the fact.

On December 7, 2011 appellant was seen by Dr. Robin Innella, an osteopath, for pain in her right knee. Dr. Innella listed a history that appellant might have injured her knee "about two months ago" when she had some swelling, possibly due to a bite. The report noted that appellant had some persistent pain. Dr. Innella noted that x-rays were unremarkable and examination showed a positive McMurray's test. She diagnosed probable medial meniscal tear. In a follow-up report dated December 14, 2011, Dr. Innella indicated that appellant continued to have knee pain and discomfort. On January 9, 2012 she noted appellant's history that, while working, she entered a building and twisted her knee when her right leg gave out from under her. At that time, appellant initially developed pain, but thought it was due to a bite.

In a statement dated December 27, 2011, appellant related that on December 7, 2011 an hour and a half into her route, she stepped into a business and had a shooting pain in her knee and it then gave out. She immediately called her supervisor and told her that she could not finish her route. On December 8, 2011 appellant went back to work. While delivering mail on her route, appellant's knee completely gave out and she called her supervisor and told him that she could not walk. A coworker had to carry her to the car and then into her home because she was unable to walk or drive herself. Appellant stated that no one told her on December 7 or 8, 2011 that she needed to fill out forms. She noted that this was the first time in 25 years as a letter carrier that she sustained an injury while at work and she was unfamiliar with the procedures. Appellant noted that her husband brought the completed paperwork to the postmaster on December 10, 2011.

By decision dated January 18, 2012, OWCP denied appellant's claim finding that she had not established that the December 7, 2011 incident occurred as alleged. It also noted that she did not submit sufficient medical evidence in connection with the incident.

On February 1, 2012 appellant, through her attorney, requested a hearing before an OWCP hearing representative.

In a January 25, 2012 letter to the postmaster, Dr. Innella stated that, based on the history provided, appellant apparently sustained an injury to her knee in October when she was entering a building. Apparently, her knee gave out and buckled under her. Appellant was treated conservatively and then had a second incident.

At the hearing held on April 12, 2012, appellant noted that her route consisted of six full blocks and she carried mail in a push cart. She described her casing duties. On September 24, 2011 appellant believed she was stung by something on the right knee and her "leg blew up." She stated that she called her supervisor and went back to the employing establishment and then to her doctor. Appellant described having trouble putting her foot down after this incident. She stated that the postmaster asked her not to complete a form and to just take off whatever time she needed. In between incidents, appellant testified that she had some issues with her knee, but did not miss any time from work. On December 7, 2011 her knee was bothering her in the morning and, when she got to a business apartment, her knee gave out. The owner of the business came out and told appellant to sit down. Appellant called her supervisor and had to walk back to the employing establishment. She saw a doctor who, after examining her, told her that she was not stung by a bee but tore her meniscus. Appellant stated that the next day she felt better and when she was almost done with the route, she had shooting pain in her knee. She called her supervisor and a man carried her to the car.

In an April 4, 2012 report, Dr. Innella noted that appellant initially presented for evaluation on December 7, 2011 with pain in her right knee. She indicated that appellant might have injured it about two months prior but she was not sure. Dr. Innella noted that appellant did have some swelling with persistent pain and discomfort. She noted a second injury when appellant was walking into a building and her leg buckled and gave out on her. Dr. Innella noted that she last saw appellant on March 14, 2012 and she still had discomfort. She stated that appellant's initial injury occurred in October, that she thought she was stung by a bee but there was no bite mark and she was treated locally. Since that time, appellant has had pain and difficulty. Dr. Innella opined that, within a reasonable degree of certainty, appellant had an initial injury in October when her knee buckled and that she was not bitten. In December, her knee buckled again causing her overall injury.

By decision dated June 26, 2012, the hearing representative affirmed the January 18, 2012 OWCP decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[2] 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 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]

[2] *Id.*

[3] *O.S.*, Docket No. 12-1145 (issued January 2, 2013); *see also Bonnie A. Contreras*, 57 ECAB 364 (2006).

[4] *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

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]

ANALYSIS

Appellant filed a traumatic injury claim alleging that she sustained an injury to her right knee on December 7, 2011. OWCP denied her claim on the grounds that she failed to establish that the incident occurred as alleged. The issue before the Board is whether appellant has established the factual aspect of her claim.

The Board finds that appellant did not meet her burden of proof to establish that she sustained an employment-related right knee injury on December 7, 2011. The record does not support her allegation that the December 7, 2011 occurred as alleged.[8] On her claim form, appellant stated that her leg gave out when she opened an office door. She reiterated that her knee gave out in a subsequent statement that it gave out again the next day. Appellant did not allege that she fell, tripped, slipped or struck her knee. The record contains no description of any specific trauma to her knee. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference of causal relation.[9] The Board finds that the statements as to how the injury occurred are inconsistent. On her claim form, appellant did not note any prior injury but alleged rather that her leg gave out on her on December 7, 2011. On that day, she informed her physician that her knee pain began two months earlier, possibly due to a bite but that she was not sure. In a January 9, 2012 report, Dr. Innella stated that appellant twisted her knee and it gave out from under her. This is the first mention of a twisting incident is also noted a possible injury in October 2011, when appellant was entering a building. There are no records related to treatment and Dr. Innella noted she did not see appellant until December 2011. Dr. Innella indicated that appellant's knee buckled and gave out on her. The history of the traumatic incident that caused injury to appellant's right knee is inconsistent. Accordingly, the Board finds that appellant did not submit sufficient evidence to establish that she experienced a specific traumatic event or incident at work on December 7, 2011.

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. §§ 10.05 through 10.607.

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[5] *B.F.*, Docket No. 0960 (issued March 17, 2009).

[6] *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

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

[8] *Paul Foster*, 56 ECAB 208 (2004).

[9] *See Alberta S. Williamson*, 47 ECAB 569 (1996).

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a traumatic injury in the performance of duty on December 7, 2011.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated June 26, 2012 is affirmed.

Issued: February 25, 2013
Washington, DC

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

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

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