

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

S.A., Appellant)

and)

DEPARTMENT OF DEFENSE, DEPARTMENT)
OF THE ARMY, GORDON ELEMENTARY)
SCHOOL, Cameron, NC, Employer)

Docket No. 13-1446
Issued: November 25, 2013

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

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On June 3, 2013 appellant filed an appeal of a May 6, 2013 decision of the Office of Workers' Compensation Programs (OWCP) denying her traumatic injury 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 the claim.

ISSUE

The issue is whether appellant established that she sustained a traumatic abdominal injury in the performance of duty.²

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant did not submit an argument on appeal.

FACTUAL HISTORY

On March 11, 2013 appellant, then a 38-year-old training instructor, filed a traumatic injury claim (Form CA-1) asserting that she sustained an abdominal injury at 1:00 p.m. that day when a toddler sitting in a time out chair kicked her twice in the lower abdomen. She noted that she previously had surgery at the site where the child kicked her. On the reverse of the form, appellant's supervisor checked boxes indicating that appellant accurately described the March 11, 2013 incident, and that the incident occurred in the performance of duty.

In a March 27, 2013 letter, OWCP advised appellant that for her claim to be accepted, she should submit a report from her physician describing and diagnosing the claimed injury, and explaining how the work incident would cause the injury.

In an April 2, 2013 letter, OWCP again advised appellant of the evidence needed to establish her claim, including a report from her attending physician including a history of injury, a detailed description of findings, results of any x-ray and laboratory tests and a diagnosis. It emphasized that this medical evidence was "crucial in consideration of [appellant's] claim." OWCP afforded appellant 30 days to submit additional evidence. Appellant did not submit additional evidence.

By decision dated May 6, 2013, OWCP denied the claim on the grounds that causal relationship was not established. It accepted that the March 11, 2013 incident occurred at the time, place and in the manner alleged. OWCP found, however, that appellant did not establish that she sustained an injury causally related to that incident because she had not submitted any medical evidence.

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 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

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁵

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

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.⁶

ANALYSIS

Appellant claimed that she sustained a lower abdominal injury on March 11, 2013 when a toddler kicked her while in time out. Her supervisor verified her account of events. OWCP accepted that the incident occurred at the time, place and in the manner alleged, but denied the claim as appellant submitted no medical evidence addressing how the accepted incident caused or aggravated an injury.

By letters dated March 27 and April 2, 2013, OWCP advised appellant of the type of evidence needed to establish her claim, including a statement from her attending physician explaining how and why the March 11, 2013 incident would cause an abdominal injury. As appellant did not submit any medical evidence, she did not meet her burden of proof.⁷ OWCP's May 6, 2013 decision is therefore appropriate under the law and facts of the case.

The Board notes that, following issuance of OWCP's May 6, 2013 decision, appellant submitted new medical evidence. This evidence has not yet been considered by OWCP. The Board may not consider new evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case.⁸

Appellant may submit this new evidence, as well as other 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 has not established that she sustained an abdominal injury in the performance of duty.

⁶ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁷ *Id.*

⁸ 20 C.F.R. § 501.2(c).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated May 6, 2013 is affirmed.

Issued: November 25, 2013
Washington, DC

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

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

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