

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

R.S., Appellant)	
)	
and)	Docket No. 14-1278
)	Issued: September 12, 2014
DEPARTMENT OF THE ARMY, MILITARY)	
OCEAN TERMINAL SUNNY POINT,)	
Southport, NC, Employer)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On May 12, 2014 appellant timely appealed the March 28, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). 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.²

ISSUE

The issue is whether appellant sustained an injury in the performance of duty on January 30, 2014.

¹ 5 U.S.C. §§ 8101-8193 (2006).

² The record on appeal contains evidence received after OWCP issued its March 28, 2014 decision. The Board is precluded from considering evidence that was not in the case record at the time OWCP issued its final decision. 20 C.F.R. § 501.2(c)(1) (2012).

FACTUAL HISTORY

Appellant, a 38-year-old security guard, filed a traumatic injury claim (Form CA-1) alleging that she slipped on icy asphalt in the performance of duty on January 30, 2014. The alleged incident occurred under the truck search canopy. Appellant claimed to have slipped and caught herself before falling. She twisted awkwardly, which caused pain in her right knee and mid-upper back. The employing establishment challenged the claim, noting that prior to the alleged injury appellant reported back pain from moving. Additionally, there were no witnesses, and appellant did not immediately seek medical attention.³

OWCP received February 6, 2014 treatment notes from Dr. John A. Azzato, a Board-certified orthopedic surgeon, who saw appellant for follow-up regarding a work-related knee and back injury. Dr. Azzato noted that her knee was still somewhat sensitive and she had intermittent upper back pain. Physical examination of the back revealed no significant tenderness, and appellant's reflexes and strength were normal. Dr. Azzato also noted that appellant's bruise had decreased. He diagnosed right knee contusion and low back strain, both improved. Dr. Azzato advised appellant to continue with her exercises and return to work as of February 7, 2014.

On February 24, 2014 OWCP advised appellant of the need for additional factual and medical evidence in support of her claimed injury. It explained that the evidence previously received was insufficient to establish that the January 30, 2014 employment incident occurred as alleged. OWCP requested a detailed description of how the injury occurred. Additionally, it advised appellant to submit a narrative medical report from her attending physician. Appellant was afforded 30 days to submit the requested factual and medical information.

OWCP subsequently received a series of x-rays taken on February 16, 2014. Dr. Gail M. Capel, a Board-certified diagnostic radiologist, found no evidence of fracture in the thoracic spine, a normal right knee and normal right tibia and fibula.

In a March 28, 2014 decision, OWCP denied appellant's traumatic injury claim because she failed to establish fact of injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.⁴

To determine if 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. The first component is whether the employee actually experienced the employment incident that

³ The employing establishment indicated that appellant did not seek medical attention until the following Monday, February 3, 2014.

⁴ 20 C.F.R. § 10.115(e), (f); see *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

allegedly occurred.⁵ The second component is whether the employment incident caused a personal injury.⁶

ANALYSIS

On January 30, 2014, appellant allegedly slipped on icy asphalt and was able to catch herself and avoid falling, but in the process, she reportedly twisted awkwardly injuring her right knee and mid-upper back. On February 24, 2014 OWCP requested additional factual and medical evidence in support of appellant's claimed injury. Specifically, it requested a detailed description of how the January 30, 2014 injury occurred. Appellant failed to submit the requested statement within the allotted time frame. OWCP also requested a narrative medical report from appellant's attending physician, which also was not received in a timely fashion.

CONCLUSION

Appellant failed to establish that she sustained an injury in the performance of duty on January 30, 2014.

ORDER

IT IS HEREBY ORDERED THAT the March 28, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 12, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

⁵ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁶ *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question which generally requires rationalized medical opinion evidence to resolve the issue.