

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

S.G., Appellant

and

U.S. POSTAL SERVICE, POST OFFICE,
Bedford Park, IL, Employer

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**Docket No. 17-0629
Issued: February 26, 2018**

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

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 27, 2017 appellant filed a timely appeal from a January 3, 2017 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.

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 30, 2015.

FACTUAL HISTORY

On February 10, 2016 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on December 30, 2015, she sustained a left knee strain when she slipped when stepping down while delivering mail on her route. She first received medical care on January 1, 2016, stopped work on January 2, 2016, and notified her supervisor on

¹ 5 U.S.C. § 8101 *et seq.*

February 10, 2016. On the reverse side of the claim form, appellant's supervisor controverted the claim, stating that the incident was not reported within 30 days of the injury.²

A January 1, 2016 emergency department report was submitted which documented appellant's treatment for left knee pain.

In a January 14, 2016 note, Dr. George Branovacki, a Board-certified orthopedic surgeon, reported that appellant was treated that same date and could return to work without restrictions on February 2, 2016.

By letter dated March 15, 2016, the employing establishment again controverted the claim arguing that appellant had not established fact of injury because she had not notified her immediate supervisor of the alleged injury until February 10, 2016, more than 30 days after the December 30, 2015 incident.

By letter dated March 23, 2016, OWCP informed appellant that the evidence of record was insufficient to establish that she provided timely notification of her work injury. Furthermore, there was no evidence of a diagnosis of any injury, nor was there a physician's opinion as to the cause of her alleged injury. OWCP provided a development questionnaire for appellant's completion and requested that she submit a response in order to substantiate the factual basis of her claim. Appellant was afforded 30 days to submit the requested evidence.

In a January 1, 2016 venous duplex scan of the left lower extremity, Dr. Michael Flisak, Board-certified in internal medicine, reported no evidence of deep vein thrombosis (DVT) in the left leg above the knee.

In a January 1, 2016 diagnostic report, Dr. Scott Grossberg, a Board-certified radiologist, reported that an x-ray of the left knee revealed mild tricompartmental osteoarthritis, small knee effusion, and no fracture or dislocation.

In a January 7, 2016 medical report, Dr. Branovacki reported that appellant was treated for left knee pain. He stated that appellant worked for the employing establishment and about eight days prior, did a lot of walking in the snow. Appellant began limping approximately two days later, causing her to seek emergency medical treatment on January 1, 2016. She reported a history of a fall roughly two years prior. It involved the left knee, which had healed successfully without any symptoms until this recent injury. Dr. Branovacki provided findings on physical examination, noted possible tendinitis synovitis or meniscus tear, and recommended a magnetic resonance imaging (MRI) scan of the left knee.

A January 7, 2016 x-ray of the left knee revealed no evidence of fracture, bone lesions, deformity, arthritic change, or soft tissue abnormalities.

In a January 7, 2016 diagnostic report, Dr. Matthew Eisenstein, a Board-certified diagnostic radiologist, reported that an MRI scan of the left knee revealed findings suspicious for

² The Board notes that appellant has three other traumatic injury claims and one occupational disease claim with dates of injury ranging from November 25, 2002 to July 7, 2015. Those claims are not presently before the Board and the case record contains no other information pertaining to those prior claims.

tear of the periphery of the medial meniscus adjacent to the free edge, mild degenerative changes involving the posterior patella, small effusion, and Baker's cyst.

In a January 7, 2016 medical report, Dr. Branovacki reported that appellant complained of right knee pain and diagnosed right knee degenerative joint disease.

Physical therapy notes from Midwest Orthopedic Consultants dated January 29 and February 11, 2016 were submitted documenting appellant's treatment for left knee pain after slipping and stepping on snow/ice while working.

By decision dated April 28, 2016, OWCP denied appellant's claim, finding that the evidence of record failed to establish a diagnosed condition causally related to the accepted December 30, 2015 employment incident. It noted that the statement she provided regarding the mechanism of injury, specifically slipping on a step, differed from that noted by Dr. Branovacki who reported that she had injured herself while walking in the snow.

On October 12, 2016 appellant requested reconsideration of OWCP's decision. In support of her claim, appellant submitted medical reports dated June 16 and July 1, 2016 from Dr. Eugene Lopez, a Board-certified orthopedic surgeon.

In the June 16, 2016 report, Dr. Lopez reported that appellant presented for treatment of left knee pain which began suddenly on December 30, 2015. He noted that she had been employed by the employing establishment for 18 years. On December 30, 2015 the weather was rainy and snowy and while walking her mail route, appellant slipped on some ice. Appellant did not fall and caught herself, but continued to slip on ice the rest of the day. She finished her mail route, but had difficulty walking, causing her to seek emergency medical treatment for left knee pain. Dr. Lopez provided findings on physical examination and noted review of diagnostic testing. He diagnosed work-related left knee medial meniscal tear and minor osteoarthritis.

In a July 1, 2016 medical report, Dr. Lopez reported that appellant's injury occurred on December 30, 2015 when she slipped on ice while walking her mail route. Appellant did not fall and caught herself, but twisted/jerked her left knee while doing so. The following day she was unable to walk due to severe left knee pain. Dr. Lopez discussed appellant's treatment history noting that a June 6, 2016 x-ray of the left knee revealed mild arthritis with slight loss of joint space and a January 7, 2016 MRI scan revealed medial meniscus tear. He diagnosed left medial meniscus tear and left knee osteoarthritis. Dr. Lopez opined with a reasonable degree of medical certainty that appellant sustained a work-related injury to her left knee due to the slip on ice on December 30, 2015. He explained that the osteoarthritis in her left knee developed over time from the constant walking and standing, but was aggravated when she slipped on ice. Dr. Lopez reported no knowledge of any other left knee injury prior to working for the employing establishment.

By decision dated January 3, 2017, OWCP affirmed the April 28, 2016 decision, as modified, finding that the evidence of record failed to establish that the December 30, 2015 employment incident occurred as alleged. It noted that appellant had established the fifth basic element of her claim for causal relationship. However, OWCP denied her claim for fact of injury because she failed to respond to the questionnaire provided with the March 23, 2016 development letter, which requested that she provide more details concerning the circumstances of the claim filed.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ 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 or specific condition for which compensation is claimed is causally related to the employment injury.⁴ 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.⁵

In order to determine whether an employee actually sustained an 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 which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.⁶ The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

When an employee claims that he or she sustained an injury in the performance of duty he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure occurring at the time and place, and in the manner alleged. He or she must also establish that such event, incident, or exposure caused an injury.⁷ Once an employee establishes that they sustained an injury in the performance of duty, they have the burden of proof to establish that any subsequent medical condition or disability from work, for which compensation is claimed is causally related to the accepted injury.⁸

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 or her subsequent course of action. In determining whether a case 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 serious doubt on the employee’s statements. The employee has not met his or her burden of proof when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁹

³ *Supra* note 1.

⁴ *Gary J. Watling*, 52 ECAB 278 (2001).

⁵ *Michael E. Smith*, 50 ECAB 313 (1999).

⁶ *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *See generally John J. Carlone*, 41 ECAB 354 (1989); *see also* 5 U.S.C. § 8101(5) (injury defined); 20 C.F.R. § 10.5(q) and (ee) (1999) (occupational disease or illness and traumatic injury defined). *See Victor J. Woodhams*, 41 ECAB 345 (1989) regarding a claimant’s burden of proof in an occupational disease claim.

⁸ *Supra* note 3.

⁹ *Betty J. Smith*, 54 ECAB 174 (2002).

ANALYSIS

While OWCP's April 28, 2016 decision accepted that the December 30, 2015 employment incident occurred as alleged, the January 3, 2017 decision modified this finding and determined that appellant failed to establish fact of injury. OWCP denied her claim based on her failure to respond to the March 23, 2016 development questionnaire which it claimed requested that she provide additional detail concerning her claim.

The Board finds that this case is not in posture for decision.

While appellant did not respond to OWCP's development questionnaire, the questionnaire did not request greater detail pertaining to the factual circumstances of the December 30, 2015 employment incident as alleged by OWCP in its January 3, 2017 decision. The Board notes that the employing establishment controverted the claim arguing that she failed to provide notice to her supervisor within 30 days of the December 30, 2015 employment injury. OWCP's questionnaire only requested that appellant submit evidence which established that her claim was filed within 30 days of the December 30, 2015 injury. The Board notes that, while the employing establishment controverted appellant's claim as untimely filed, there is no requirement that a claim be filed on the date of injury.¹⁰ In cases of injury on or after September 7, 1974, section 8122(a) of FECA provides that an original claim for compensation for disability or death must be filed within three years after the injury or death.¹¹

With respect to the details surrounding the employment incident, appellant's February 10, 2015 Form CA-1 alleged that she slipped off a step on December 30, 2015. Dr. Lopez's medical reports document that on December 30, 2015 appellant slipped on ice while walking her mail route in snowy and rainy conditions. While appellant's description of the employment incident is vague, it is not so contradictory with that of her medical reports to establish that the December 30, 2015 employment incident did not occur as alleged.¹² Moreover, she sought medical treatment shortly after her injury, just two days following the employment incident. Thus, the Board finds that given the above-referenced evidence, appellant has alleged with specificity that the incident occurred at the time, place, and in the manner alleged.¹³

As there is no dispute that appellant slipped on ice while delivering mail on December 30, 2015, the Board finds that the first component of fact of injury, the claimed incident, occurred as alleged.¹⁴ Given that appellant has established that the December 30, 2015 employment incident occurred as alleged, the question becomes whether this incident caused an injury. While OWCP's January 3, 2017 decision indicated that causal relationship had been established, this decision did not review the medical evidence of record and make appropriate

¹⁰ *J.S.*, Docket No. 15-1618 (issued March 7, 2016).

¹¹ 5 U.S.C. § 8122(a); section 10.100(b) of OWCP regulations also provides that for injuries sustained on or after September 7, 1974, a notice of injury must be filed within three years of the injury. 20 C.F.R. § 10.100(b). *See also A.D.*, Docket No. 15-0732 (issued September 29, 2015).

¹² *See Willie J. Clements*, 43 ECAB 244 (1991).

¹³ *Id.*

¹⁴ *James R. Flint*, Docket No. 05-0587 (issued June 10, 2005).

factual findings. It is a well-established principle that OWCP must make findings of fact and offer a statement of reasons in its final decision.¹⁵

Thus, the Board will set aside OWCP's January 3, 2017 merit decision and remand the case for further development of the medical evidence.¹⁶ After further development as deemed necessary, OWCP shall issue a *de novo* final decision on appellant's traumatic injury claim.

CONCLUSION

The Board finds that appellant has established that the December 30, 2015 employment incident occurred as alleged. The Board further finds that this case is not in posture for decision as to whether appellant sustained an injury causally related to the accepted employment incident. On remand, OWCP will consider the medical evidence and issue a *de novo* decision.

ORDER

IT IS HEREBY ORDERED THAT the January 3, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.¹⁷

Issued: February 26, 2018
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

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

¹⁵ 20 CFR § 10.126.

¹⁶ *T.F.*, Docket No. 12-0439 (issued August 20, 2012).

¹⁷ Colleen Duffy Kiko, Judge, participated in this decision, but was no longer a member of the Board effective December 11, 2017.