

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

C.B., Appellant)
and) Docket No. 07-1260
U.S. POSTAL SERVICE, POST OFFICE,) Issued: September 19, 2007
Bossier City, LA, Employer)

)

Appearances: Case Submitted on the Record
Appellant, pro se
Office of Solicitor, for the Director

DECISION AND ORDER

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

JURISDICTION

On April 10, 2007 appellant filed a timely appeal of the Office of Workers' Compensation Programs' merit decision dated January 18, 2007 finding that she had not established an injury on September 27, 2006 causally related to her federal employment. Pursuant to 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 has met her burden of proof in establishing that she sustained an injury in the performance of duty on September 27, 2006.

FACTUAL HISTORY

On December 1, 2006 appellant, then a 26-year-old letter carrier, filed a traumatic injury claim alleging that on September 27, 2006 she stepped into a hole while delivering mail in the performance of duty resulting in pain to her left knee. On the reverse of the form, her supervisor, Gina L. Jones, disputed appellant's claim. In response to the question of whether appellant was injured in the performance of duty, Ms. Jones replied, "Not on the date of September 27, 2006, I

was in the presence of the employee for the entire time the employee was on the clock and no injury was observed or reported.”

Appellant submitted a narrative statement asserting that, “On or about September 27, 2006 I stepped in a hole that was covered by leaves and grass....” She alleged that she immediately experienced sharp pain in her left leg, but ignored it. Appellant’s left knee pain increased the evening and night of September 27, 2006 and she sought medical treatment the following day, September 28, 2006. Ms. Jones responded on December 1, 2006 and noted that appellant informed her that she was undergoing knee surgery and that her injury was job related. She noted that on September 27, 2006 she had performed a full office count and full street observation of appellant. Ms. Jones stated, “At no time during the full street observation did I observe [appellant] slip, trip or fall due to a hole in the ground covered with leaves. I walked the entire route with her....”

In a letter dated December 15, 2006, the Office requested additional factual and medical evidence from appellant regarding the date and place of the employment incident. The Office informed appellant that Ms. Jones disputed her claim and allowed her 30 days for a response.

By decision dated January 18, 2007, the Office denied appellant’s claim finding that she had not submitted sufficient factual evidence to establish that the employment incident occurred at the time, place and in the manner alleged.¹

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees’ Compensation Act² 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 the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained 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. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

The Office’s regulations define a traumatic injury as a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.⁴ To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must

¹ Following the Office’s January 18, 2007 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board may not review the evidence for the first time on appeal. See 20 C.F.R. § 501.2(c).

² 5 U.S.C. §§ 8101-8193.

³ *Donald W. Wenzel*, 56 ECAB ____ (Docket No. 05-146, issued March 12, 2005).

⁴ 20 C.F.R. § 10.5(ee).

first be determined whether a “fact of injury” has been established. 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. An employee has the burden of establishing the occurrence of an injury at the time, place and in the manner alleged, by the preponderance of the reliable, probative and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that the employee sustained an injury in the performance of duty, but the employee’s statements must be consistent with the surrounding facts and circumstances and his subsequent course of action. An employee has not met his burden of proof where there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁵

ANALYSIS

Appellant alleged that she injured her left knee in the performance of duty on September 27, 2006 when she stepped in a hole while delivering mail in the performance of duty. She stated that she sought medical treatment for her left knee pain on September 28, 2006. However, appellant did not submit any medical evidence dated September 28, 2006 to substantiate her claim. Her supervisor disputed her claim, noting that she accompanied appellant on September 27, 2006 throughout her entire mail route. Ms. Jones stated that appellant did not “trip, slip or fall” while delivering her route on September 27, 2006. Appellant has not submitted sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged given that her supervisor walked her delivery route with her and denied that appellant took any misstep. She failed to substantiate her allegation that she sustained an employment incident on September 28, 2006 and the Office properly denied her claim.

CONCLUSION

The Board finds that appellant failed to meet her burden of proof in establishing that she sustained an employment incident on September 27, 2006 as alleged, and that therefore, the Office properly denied her claim.

⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the January 18, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 19, 2007
Washington, DC

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

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