United States Department of Labor
Employees' Compensation Appeals Board

M.H., Appellant	)	
and	)	**Docket No. 08-120**
	)	**Issued: April 17, 2008**
U.S. POSTAL SERVICE, POST OFFICE, Pinson, AL, Employer	)	

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

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 16, 2007 appellant filed a timely appeal from the July 16, 2007 decision of the Office of Workers' Compensation Programs which denied her traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant sustained a traumatic injury on June 2, 2007, as alleged.

FACTUAL HISTORY

On June 7, 2007 appellant, then a 49-year-old rural letter carrier, filed a traumatic injury claim alleging that she broke bones in her left foot on June 2, 2007. She stated that she attempted to stop her mail car from rolling backwards down a driveway and was thrown to the ground by the door of the automobile. Appellant stopped work on June 2, 2007. Gary Smithey, appellant's supervisor, controverted the claim. He noted that appellant stopped work on June 2, 2007 but could not verify whether she had been thrown to the ground and that she did not report

an injury on June 2, 2007 while at the site of the injury. Mr. Smithey indicated that appellant failed to follow safety procedures, as she did not turn off her car, set the parking brake, or make sure the vehicle was set in park. Appellant first reported the injury to him on June 7, 2002.

On June 14, 2007 the Office requested that appellant submit additional evidence in support of her claim. It requested that she submit a description of how the injury occurred, provide a statement from any witness and state the immediate effects of the injury and what she did afterwards. Appellant was asked to address whether she had any similar condition prior to injury and to submit a narrative medical report from an attending physician.

Appellant submitted a June 4, 2007 treatment note from Dr. Carter E. Slappey, a Board-certified orthopedic surgeon. With regard to the history of injury, Dr. Slappey stated, "[appellant] injured her left foot and ankle. The car got away from her and knocked her down." He noted that she saw a Dr. McCleney and was experiencing left dorsal ankle and foot pain. Appellant's history included prior surgery on her ankle by Dr. Kelly Snow, for an apparent fracture of the lateral malleolus and repair of the deltoid with multiple anchors. Dr. Slappey noted pain and swelling of appellant's left ankle and foot on examination. His review of x-rays showed "the old ankle fracture and an acute fracture at the base of her second metatarsal, questionable third metatarsal, with no significant displacement." Appellant was treated with a walking boot with icing and elevation encouraged. On June 13, 2007 Dr. Slappey limited appellant's walking and released her to return to work as of June 15, 2007.

In a July 16, 2007 decision, the Office denied appellant's claim. It found that the evidence of record was insufficient to establish that the June 2, 2007 incident occurred as alleged as she did not submit a detailed statement concerning the facts of her claim.

LEGAL PRECEDENT

An employee has the burden of establishing the essential elements of her claim, including the fact that she is an "employee of the United States" within the meaning of the Federal Employees' Compensation Act, that the claim was timely filed within the applicable time limitation period, that an injury was sustained in the performance of duty, as alleged, and that any disability or specific conditions for which compensation is claimed are causally related to the employment injury.[1] These are the essential elements of every claim for compensation regardless of whether the claim is based on a traumatic injury or an occupational disease.[2]

An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury while in the performance of duty. However, the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action.[3] Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged

[1] *See James P. Bailey*, 53 ECAB 494 (2002).

[2] *See Christine S. Hebert*, 49 ECAB 616 (1998).

[3] *See Mary Jo Coppolino*, 43 ECAB 988 (1992).

injury and failure to obtain medical treatment may cast doubt on an employee's statements in determining whether he or she has established a *prima facie* claim for compensation. However, an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong and persuasive evidence.[4]

ANALYSIS

The Office denied appellant's claim for injury, finding that she did not establish the June 2, 2007 incident at the time, place or in the manner alleged. It noted that she failed to submit a detailed statement addressing the circumstances surrounding her claim. The Board finds, however, that the evidence of record is sufficient to establish the June 2, 2007 incident occurred, as alleged.

Appellant alleged injury to her left foot on June 2, 2007 after she attempted to stop her motor vehicle from rolling down a driveway while on her postal route. The record reflects that appellant stopped work that day and was treated on June 4, 2007 by Dr. Slappey, an orthopedic surgeon. He obtained a history that her car "got away from her and knocked her down." He noted that she was referred by a Dr. McCleney, who saw her for left ankle and foot pain. On examination, Dr. Slappey found that appellant's left foot and ankle were swollen. While he noted a history of prior treatment for an old ankle fracture, he advised that x-rays were obtained which revealed an acute fracture at the base of the second metatarsal with a questionable fracture of the third metatarsal. This evidence does not establish such inconsistencies such as to cast doubt on the validity of appellant's claim. It reflects that appellant sought medical attention reasonably contemporaneous with the June 2, 2007 incident. Dr. Slappey examined appellant two days following the incident, observed swelling of the left ankle and foot and diagnosed a fracture of the second metatarsal of her left foot. While he did not list the date of the June 2, 2007 incident in obtaining her history, there are no inconsistencies in the record with how she attempted to stop her postal vehicle from rolling down a driveway. The fact that appellant may have a preexisting ankle fracture does not justify the finding that the June 2, 2007 incident did not occur, as alleged.[5] This is not a situation in which the employee continued to work without apparent difficulty or delayed in obtaining medical treatment. The medical evidence documents an acute fracture of the second metatarsal of the left foot.

Appellant's supervisor controverted the claim, in part, based on the fact that she did not adequately follow safety procedures by making sure her car had been placed in park with the parking brake engaged. However, the fact that appellant may have been negligent in the operation of her motor vehicle, does not preclude her claim for compensation. There is no provision in the Act allowing the denial of a claim for compensation because the employee did something imputing culpability or fault on her part.[6] He also controverted the claim on the basis that she did not advise him of her injury until June 7, 2007. However, this is not an instance of

[4] *Allen C. Hundley*, 53 ECAB 551 (2002); *Earl David Seal*, 49 ECAB 152 (1997).

[5] *See Willie J. Clements*, 43 ECAB 244 (1991).

[6] *See Eric J. Koke*, 43 ECAB 638 (1992); *Robert L. Williams*, 1 ECAB 80 (1948). Compensation could be denied only if it is barred by the affirmative defenses contained in section 8102 of the Act. 5 U.S.C. § 8102.

late notification of injury. Appellant filed her claim within five days of the June 2, 2007 incident after obtaining medical treatment for her left foot. In hindsight, it may not have been prudent for appellant to attempt to stop a moving motor vehicle with her left foot; however, the "inconsistencies" as found by the Office for rejecting the claim are insufficient for rejecting that the June 2, 2007 incident occurred as alleged.[7] Her claim is not refuted by any strong or persuasive evidence. The Board finds that appellant has established a *prima facie* claim for compensation. The case will be returned to the Office for further development of the medical evidence.

CONCLUSION

The Board finds that the June 2, 2007 incident occurred while appellant was in the performance of duty. The case is returned to the Office for further development.

ORDER

IT IS HEREBY ORDERED THAT the July 16, 2007 Office of Workers' Compensation Programs' decision be set aside. The case is remanded to the Office for further action in conformance with this decision.

Issued: April 17, 2008
Washington, DC

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

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

[7] *See Bill H. Harris*, 41 ECAB 216 (1989).