

The record contains a report from the employing establishment's first aid response team, reflecting that, on the date in question, appellant was found on the floor, unresponsive, lying on her stomach. Appellant informed the responder that she "fell and hit her head." She stated that she "felt numb and hit [the] floor."

Appellant submitted a December 22, 2005 Jamaica Hospital Emergency Department aftercare report, reflecting a diagnosis of "syncope." The record contains a December 22, 2005 duty status report, reflecting that appellant struck her head on the floor, causing trauma to the head, as well as numbness.

In a December 29, 2005 report, Dr. Eric L. Freeman, a Board-certified orthopedic surgeon, diagnosed cervical strain, with a likely herniated disc. He stated that appellant injured her cervical spine while lifting on December 22, 2005.

In a report dated January 4, 2006, Dr. N.K. Raman, a treating physician, diagnosed herniated disc of the cervical spine. He related appellant's report that she experienced an episode of "LOC [loss of consciousness]" at work on December 22, 2005, "resulting in a fall, hitting her head."

In a letter dated February 9, 2006, the Office informed appellant that the information submitted was insufficient to establish her claim. It advised her to provide additional information and evidence, including details surrounding the alleged incident, witness statements and a physician's report with a diagnosis and an opinion explaining how the incident resulted in the diagnosed condition.

Appellant submitted January 13, 2006 physical therapy notes, signed by Michael Flowers, a physical therapist. The notes reflect appellant's report that she fainted and struck her head while at work on December 22, 2005.

Appellant submitted a report dated February 1, 2006 from Dr. Edward Toriello, a Board-certified orthopedic surgeon, who stated that appellant allegedly slipped and fell on December 22, 2005, injuring her head and neck. Dr. Toriello's examination revealed evidence of resolved cervical hyperextension injury.

In a February 10, 2006 statement, appellant indicated that, on the date in question, she was on her way to use the restroom when she fell to the floor and struck her head in an area where there were "post-cons." She noted that she was not sure whether she struck her head on the post-con, but she knew that her face was flat on the floor after the fall. Immediately after falling, appellant's body was "paralyzed," and she felt numbness and pain in her neck and head. She reported that she had been experiencing migraines for 10 years, but that she had never passed out from the effects of a migraine and had never had fainting spells.

In a February 15, 2006 report, Dr. James M. Liguori, a Board-certified neurologist, stated that appellant sustained injuries to her head and neck on December 22, 2005, when she fell, striking her head on the floor, and losing consciousness for approximately 30 seconds. He diagnosed post-traumatic head trauma, with postconcussion headache syndrome and cervical radiculopathy with myelopathy.

On March 1, 2006 Dr. Freeman stated:

“[Appellant] clearly has a causal related accident from December 22, 2005. This happened when she was lifting, although she has been suffering from headaches, this was unrelated to her acute injury. Additionally, [appellant] had a traumatic injury where she had fallen and hit her head on the floor at the initial accident from December 22, 2005.”

By decision dated March 20, 2006, the Office denied appellant’s claim on the grounds that the evidence failed to establish that she had sustained an injury in the performance of duty. It accepted that she fell on December 22, 2005, but that the cause of the fall was unknown or unexplained.

On May 30, 2006 appellant requested reconsideration. She stated that, while walking to the bathroom on December 22, 2005, she tripped on a rubber mat, causing her to fall, strike her head on a postcon and pass out.

Appellant submitted reports dated March 30 and April 20, 2006 from Dr. Sebastian Lattuga, a Board-certified orthopedic surgeon. On March 30, 2006 Dr. Lattuga stated that appellant “hurt herself at work on December 22, 2005, injuring her neck and head.” On April 20, 2006 he indicated that appellant was “at work walking when she tripped over a mat and hit her head on the post cart (sic). At that time she was knocked out and found on the floor several minutes later.”

By decision dated August 30, 2006, the Office denied modification of its March 20, 2006 decision. It found that inconsistencies in the record cast serious doubt on the validity of appellant’s claim, and that she had submitted insufficient factual evidence to establish that the incident occurred at the time, place and in the manner alleged.

On November 16, 2006 appellant, through her representative, requested reconsideration. The representative stated that Dr. Freeman misunderstood the circumstances of the December 22, 2005 incident, and that the injury occurred as a result of a fall, not as a result of lifting. He contended that the fall should be compensable, as it occurred in the performance of duty. The representative stated that it should not be considered an idiopathic fall because appellant hit her head on a postcon when she fell.

In a statement dated September 28, 2006, appellant indicated that she cut through the postcons (used for mail break-ups) on her way to the bathroom on the date in question. She stated that she tripped and fell when her feet got caught in the mat. As she fell, she allegedly hit her head on a postcon and lost consciousness. When she regained consciousness, she was in severe pain and was taken to the hospital.

In an October 18, 2006 report, Dr. Freeman stated that appellant had been “documenting that it was not actually from lifting but she had fallen. There was a misunderstanding on the initial visit.”

On September 26, 2006 Dr. Liguori stated that appellant suffered from cervical radiculopathy and cerebral concussion as a result of injuries sustained in a work-related incident on December 22, 2005. He indicated that her migraine condition did not cause her to fall.

In a January 17, 2007 statement, employing establishment supervisor, Joseph Stallone, reported that he had interviewed Violet Desruisseaux, a first aid responder, who was the first person to appear on the sight of the incident. Ms. Desruisseaux stated that appellant had been found lying on the floor on December 22, 2005. She indicated that appellant told her that “everything went numb and the next thing she remembered was waking up and being questioned.” The first aid responder noted that at no time did appellant mention that she had tripped over a floor mat or that she struck her head.

By decision dated March 1, 2007, the Office denied modification of its previous decision, finding that the evidence presented was inconsistent and insufficient to establish the fact of injury.

On January 10, 2008 appellant again requested reconsideration. In a January 4, 2008 statement, she reiterated her allegation that, after tripping on a mat on December 22, 2005, she fell, striking her head on the postcon.

Appellant submitted a November 3, 2007 report from Dr. Lattuga, who stated that, on December 22, 2005, appellant had tripped on a mat, striking her head on a post cart. As a result of the fall, she reportedly passed out and fell flat on her stomach. Dr. Lattuga diagnosed cervical sprain and radiculopathy and herniated disc.

By decision dated March 19, 2008, the Office denied modification of its previous decisions.

LEGAL PRECEDENT

The Federal Employees’ Compensation Act¹ provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.² The phrase “sustained while in the performance of duty” is regarded as the equivalent of the coverage formula commonly found in workers’ compensation laws, namely, “arising out of and in the course of employment.”³

An employee seeking benefits under the Act has the burden of proof to establish the essential elements of 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

¹ 5 U.S.C. § 8101 *et seq.*

² *Id.* at § 8102(a).

³ This construction makes the statute effective in those situations generally recognized as properly within the scope of workers’ compensation law. *Charles E. McAndrews*, 55 ECAB 711 (2004); *see also Bernard D. Blum*, 1 ECAB 1 (1947).

duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁴ When an employee claims that she sustained a traumatic injury in the performance of duty, she must establish the “fact of injury,” namely, she must submit sufficient evidence to establish that she experienced a specific event, incident or exposure occurring at the time, place and in the manner alleged, and that such event, incident or exposure caused an injury.⁵

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 her subsequent course of action. In determining whether a *prima facie* 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 substantial doubt on a claimant’s statements. The employee has not met her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim.⁶

ANALYSIS

The Board finds that appellant has failed to meet her burden of proof in establishing that she sustained a traumatic injury on December 22, 2005. There are inconsistencies in the evidence which cast serious doubt on the validity of her claim.

Appellant has provided inconsistent versions of the alleged incident. In her original statement, she indicated that, while walking to the bathroom on the date in question, she passed out, striking her head on the floor. Appellant told the employing establishment’s first aid response team that she “felt numb and hit [the] floor.” On February 10, 2006 she stated that all she remembered was falling to the floor and striking her head in an area where there were “post-cons.” Appellant noted that she was not sure whether she struck her head on a postcon, but she knew that her face was flat on the floor after the fall. However, on May 30, 2006, after the Office’s initial denial of the claim, she provided a different version of the incident, alleging that she tripped on a rubber mat, fell to the floor, struck her head on a postcon, and passed out. On September 28, 2006 appellant alleged that, as she cut through the postcons (used for mail break-ups) on her way to the bathroom on the date in question, she tripped and fell when her feet got caught in a mat. She has stated conflicting versions of the facts surrounding her alleged injury, but has not presented any evidence, such as witness statements, to substantiate any of her allegations, nor did she explain why the details she provided on the date of the alleged event, and shortly thereafter, differed substantially from those provided after the Office’s denial of her claim.

The factual and medical evidence of record also reflects appellant’s divergent reports of how the alleged incident occurred. A December 22, 2005 duty status report reflects that appellant struck her head on the floor, causing trauma to the head, as well as numbness.

⁴ *Robert Broome*, 55 ECAB 339 (2004); *see also Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ *Betty J. Smith*, 54 ECAB 174 (2002); *see also Tracey P. Spillane*, 54 ECAB 608 (2003). 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

⁶ *See Betty J. Smith*, *supra* note 5.

However, on December 29, 2005 Dr. Freeman stated that appellant injured her cervical spine while lifting on December 22, 2005. On March 1, 2006 he revised the history of injury to reflect that appellant also fell and hit her head on the floor on the date of the alleged incident. On October 18, 2006 Dr. Freeman again modified his report, noting that appellant had been “documenting that it was not actually from lifting but she had fallen, and that there was a misunderstanding on the initial visit.” On January 4, 2006 Dr. Raman related appellant’s report that she lost consciousness at work on December 22, 2005, “resulting in a fall, hitting her head.” January 13, 2006 physical therapy notes reflect appellant’s report that she fainted and struck her head while at work on December 22, 2005. On February 1, 2006 Dr. Toriello provided an entirely different report of injury, indicating that appellant slipped and fell on December 22, 2005, injuring her head and neck. In a February 15, 2006 report, Dr. Liguori stated that appellant sustained injuries to her head and neck when she fell, striking her head on the floor, and losing consciousness for approximately 30 seconds. On April 20, 2006 and November 3, 2007 following the Office’s initial denial of appellant’s claim, Dr. Lattuga stated that appellant was knocked unconscious when she tripped over a mat and hit her head on the post cart on December 22, 2005. Appellant did not attempt to reconcile these conflicting reports.

The Board finds that appellant has failed to establish the fact of injury: she did not submit sufficient evidence to establish that she actually experienced an employment incident at the time, place and in the manner alleged.⁷ The inconsistencies in both appellant’s allegations and the evidence of record cast serious doubt on the validity of her claim.⁸ She initially alleged that she fell to the floor after experiencing numbness. However, after the Office denied her claim, appellant modified her allegations to reflect that she had tripped over a mat and hit her head on a postcon. Appellant provided no evidence to corroborate either version of alleged facts. The medical evidence of record, which provides at least four different accounts of the incident, creates further confusion. Given the surrounding facts and circumstances and her subsequent course of action, appellant’s claim lacks credibility. Due to the inconsistencies in the evidence regarding the time, place and manner in which the alleged incident occurred, the Board finds that appellant has failed to establish her claim.⁹

CONCLUSION

The Board finds that appellant has not established that she sustained a traumatic injury on December 22, 2005 in the performance of duty.

⁷ *Betty J. Smith, supra note 5; see also Tracey P. Spillane, supra note 5.* 5 U.S.C. § 8101(5). *See* 20 C.F.R. § 10.5(ee).

⁸ *See Betty J. Smith, supra note 5.*

⁹ *See Caroline Thomas, 51 ECAB 451, 455 (2000).*

ORDER

IT IS HEREBY ORDERED THAT the March 19, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 19, 2008
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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