

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

K.B., Appellant)	
)	
and)	Docket No. 08-909
)	Issued: September 3, 2008
DEPARTMENT OF VETERANS AFFAIRS,)	
LOUIS STOKES CLEVELAND VETERANS)	
ADMINISTRATION MEDICAL CENTER,)	
Brecksville, OH, Employer)	

<i>Appearances:</i>	<i>Case Submitted on the Record</i>
<i>Alan J. Shapiro, Esq., for the appellant</i>	
<i>Office of Solicitor, for the Director</i>	

DECISION AND ORDER

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

JURISDICTION

On February 7, 2008 appellant filed a timely appeal from an August 30, 2007 merit decision of the Office of Workers’ Compensation Programs denying her claim for compensation. Under 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 in establishing that she sustained an injury in the performance of duty on May 12, 2007.

FACTUAL HISTORY

On July 16, 2007 appellant, then a 52-year-old registered staff nurse, filed a traumatic injury claim (Form CA-1), alleging that she sustained injuries to her back and lower extremities on May 12, 2007. She stated that she hurt her knees when she tripped over the leg extension of a patient’s wheelchair and fell to the floor. Appellant also hurt her back when she helped another nurse pick up a patient. She stopped work on June 11, 2007 and returned to work on

July 5, 2007. Appellant's supervisor stated that he received notice of the claimed injury on July 16, 2007.

In a July 16, 2007 statement, appellant advised that when each of the incidents happened she thought her injuries would resolve on their own. She used over-the-counter anti-inflammatory medicines while she was working and sick and annual leave to try to heal. Appellant noted that the incidents occurred at separate times and indicated that she would have to consult other sources to determine the dates of each incident.

Appellant submitted copies of verification of employment; her time and leave from April 29 to July 7, 2007; a July 16, 2007 choice of physician election form; a copy of back exercises and, forms and generic documents from Euclid Hospital dated June 28 and 30, 2007. Dr. Stephen Archacki, a Board-certified internist, submitted notes regarding knee pain and excuses from work from June 21 to July 14, 2007.

In a July 16, 2007 report, Steven J. Raab, a physician assistant, noted that appellant advised that she injured her back while lifting a patient on April 30, 2007 and injured both knees when she tripped over a wheelchair and fell on May 12, 2007. He provided an assessment of chronic left knee pain and back pain. A report of accident form indicated that appellant had "slip/trip/fall" on May 12, 2007 at 22:20.

In a letter dated July 19, 2007, the Office informed appellant that the evidence of record was insufficient to support her claim for a traumatic injury on May 12, 2005. It advised her to submit additional medical and factual information.

In an August 10, 2007 statement, appellant indicated that she injured her knees on April 30, 2007 when she tripped and fell over the leg extension of a patient's wheelchair and landed on both knees on the floor. She also hurt her back on May 12, 2007, when she helped another nurse, Rick Morgan, pick up and move a patient to a wheelchair. Appellant reiterated that she did not seek immediate treatment, hoping that her injuries would resolve. She went to the Euclid Hospital emergency room on June 10, 2007 and described her medical treatment thereafter. In an undated statement, Jacob Carpeal, a patient, indicated that appellant was changing the bandage on his right foot on April 30, 2007 when she tripped over the leg extensions of his wheelchair and landed on both her knees on the floor.

Appellant submitted a copy of her CA-1 form signed July 16, 2007 which included the additional date of April 30, 2007 to the date of injury. She also submitted physical therapy notes, x-ray and magnetic resonance imaging (MRI) scan reports; forms and generic documents from Euclid Hospital and medical notes from Dr. Archacki.

In an August 15, 2007 report, Dr. Archacki stated that he first saw appellant on June 11, 2007 for severe knee pain. He stated that appellant sustained a left knee injury during the first week of May 2007 and noted that she reported two separate incidents. Dr. Archacki provided a history of appellant's medical treatment and diagnosed severe left knee tendinitis. In an attending physician's report of August 15, 2007, he listed dates of injury as April 30 and May 12, 2007 and diagnosed left knee pain and left leg tendinitis. Dr. Archacki opined that appellant's medical conditions were causally related to her work activities as she was injured at work.

By decision dated August 30, 2007, the Office denied appellant's claim finding that she had not established that the claimed incidents occurred as alleged. It noted that its decision did not address the claimed back injury as that was a separate incident that could be pursued by filing a separate traumatic injury claim.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act¹ 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 disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.² 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

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office 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.⁴ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁵ Regarding the first component, an injury does not have to be confirmed by eyewitnesses in order to establish that an 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 or her subsequent course of action.⁶ An employee has not met his or her burden of proof of establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁷ Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain medical treatment may, if otherwise unexplained, cast doubt on an employee's statements in determining whether a *prima facie* case has been established.⁸ However, an employee's

¹ 5 U.S.C §§ 8101-8193.

² *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *See Louise F. Garnett*, 47 ECAB 639 (1996).

⁵ *Id.*

⁶ *See Gene A. McCracken*, 46 ECAB 593 (1995).

⁷ *See Louise F. Garnett*, *supra* note 4.

⁸ *Linda S. Christian*, 46 ECAB 598 (1995).

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 or persuasive evidence.⁹

ANALYSIS

Appellant alleged that she injured her back and knees when she tripped and fell over a wheelchair and that she also injured her back when she helped lift a patient. As she claimed two different employment incidents, with two separate injuries under the same claim, the Office properly noted that a separate Form CA-1 should be filed for each incident.¹⁰ It developed the present claim for appellant's alleged knee injury and denied the claim on the basis that fact of injury was not established because appellant did not establish that the May 12, 2007 incident occurred as alleged.

The record contains discrepancies with regard to the date of injury which leave the factual basis of the claim in question. Appellant initially reported on her CA-1 form that she injured her knees when she tripped and fell over a wheelchair on May 12, 2007. However, she did not seek medical attention until June 10, 2007, when she went to the emergency room. In a July 16, 2007 statement, appellant explained that she delayed seeking medical treatment as she was self-treating her knee and hoped it would resolve on its own. Dr. Archacki, who first saw appellant on June 11, 2007, reported that the incident occurred "during the first week of May." In an August 10, 2007 statement, appellant subsequently claimed that the tripping incident occurred on April 30, 2007, which witness Jacob Carpeal supported in an undated statement. However, the July 16, 2007 report of accident and Steven Raab's July 16, 2007 report all note appellant's trip and fall as occurring on May 12, 2007.

The Board notes that a claimant's relation of an employment incident carries great probative value and will stand unless refuted by strong or persuasive evidence.¹¹ The evidence in this case is unclear as to when appellant tripped and fell over a wheelchair. Appellant has not provided a consistent date of injury. She did not immediately notify the employing establishment of her injury or seek immediate medical attention. The Board finds that the evidence of record contains such inconsistencies as to cast doubt on the validity of her claim. The Board finds that appellant has not met her burden of proof in establishing that she experienced an employment-related incident on May 12, 2007 at the time, place and in the manner alleged.¹²

⁹ *Constance G. Patterson*, 41 ECAB 206 (1989); *Thelma S. Buffington*, 34 ECAB 104 (1982).

¹⁰ Traumatic injury means 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. 20 C.F.R. § 10.5(ee) (1999). A claimant must establish a factual basis for an allegation and it must be substantiated as a compensable work factor. *See, e.g., Katherine A. Berg*, 54 ECAB 262 (2002).

¹¹ *Id.*

¹² As appellant did not establish an employment incident alleged to have caused her injury, it is not necessary to consider any medical evidence. *Bonnie A. Contreras*, 57 ECAB 364 (2006).

CONCLUSION

The Board finds that appellant did not meet her burden of proof in establishing that she sustained an injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated August 30, 2007 is affirmed.

Issued: September 3, 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