

work on that date and returned on March 20, 2010. Appellant's supervisor commented that she and appellant occasionally discussed appellant's ongoing history of left knee problems and added that it was "unknown" whether appellant was injured in the performance of duty. The supervisor controverted the claim noting that it was filed more than 30 days after the claimed incident and appellant already had a chronic knee problem, for which testing was scheduled, "when she decided she was injured at work."

Emergency department records, dated December 1 and 12, 2009, noted left knee pain and advised that appellant stop work for two days, respectively.

A December 14, 2009 magnetic resonance imaging (MRI) scan report from Dr. Robert H. Santee, a Board-certified diagnostic radiologist, revealed tears of the anterior cruciate ligament and posterior horn of the medial meniscus, tendinopathy and small joint effusion of the left knee. Dr. Santee noted that appellant "stepped off a sidewalk and heard a 'pop' with fall."

In a December 15, 2009 report, Dr. John E. Harrison, a Board-certified orthopedic surgeon, saw appellant in follow-up for left-sided knee pain. Appellant related that she was "at work a few days after last being seen and fell aggravating her knee further." On physical examination, Dr. Harrison observed tentative movements, mild flexion deficit and medial joint line tenderness. He concurred with the December 14, 2009 MRI scan results and diagnosed internal derangement involving left medial meniscal and possible anterior cruciate ligament tears. Dr. Harrison advised that appellant remain off work until December 21, 2009.

In a December 22, 2009 report, Dr. John M. Reynolds, a Board-certified orthopedic surgeon, noted that appellant presented left medial pain for over one month. He added, "There was no specific injury. The pain has gotten worse with time." Dr. Reynolds observed that she was obese and walked with a walker. On examination, he noted medial joint line tenderness and a positive meniscal rotation maneuver. Based on these findings and the December 14, 2009 MRI scan findings, he diagnosed left medial meniscal and possible anterior cruciate ligament tears and advised surgical intervention. Dr. Reynolds subsequently performed a diagnostic left knee arthroscopy, partial medial meniscectomy and chondroplasty. In a surgical note also dated December 22, 2009, he advised that appellant had persistent left knee pain and instability "after an injury." Dr. Reynolds noted performing a partial medial meniscectomy and chondroplasty and postoperatively assessed left medial meniscal tear and osteoarthritis, adding that the anterior cruciate ligament was functionally intact, and recommended that appellant not work for a minimum of four weeks.

Clinical records from Dr. Reynolds for the period December 29, 2009 to February 15, 2010 exhibited slow improvement in appellant's left knee despite "generally look[ing] good," pointing to lingering anteromedial and superolateral pain, instability, medial joint line tenderness and poor quadriceps strength. Dr. Reynolds stated in a February 15, 2010 report that appellant could not return to work for at least another month.

Appellant provided physical therapy records dated January 8 and February 11, 2010, both of which listed December 22, 2009 as the date of injury.

On April 12, 2010 the Office informed appellant that the evidence was insufficient to establish that she actually experienced a work incident on December 12, 2009 and that such incident caused or aggravated a left knee condition. It asked that appellant respond to questions regarding any prior left knee condition and why she did not sooner report her injury. The Office gave her 30 days to provide evidence addressing these deficiencies. Appellant did not respond.

By decision dated May 17, 2010, the Office denied appellant's claim, finding the evidence insufficient to demonstrate that the claimed incident occurred or whether her condition was the result of the natural progression of a preexisting condition.

LEGAL PRECEDENT

An employee seeking compensation under the Act² has the burden of establishing the essential elements of her claim by the weight of reliable, probative and substantial evidence,³ including that she is an "employee" within the meaning of the Act and that she filed her claim within the applicable time limitation.⁴ The employee must also establish that she sustained an injury in the performance of duty as alleged and that her disability for work, if any, was causally related to the employment injury.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that she actually experienced the employment incident at the time, place and in the manner alleged. Second, the employee must submit evidence, in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶

An employee's statement 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.⁷ Moreover, an injury does not have to be confirmed by eyewitnesses. The employee's statement, however, must be consistent with the surrounding facts and circumstances and her subsequent course of action. An employee has not met her burden in 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. Circumstances such as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury and failure to obtain

² 5 U.S.C. §§ 8101-8193.

³ *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 57 (1968).

⁴ *R.C.*, 59 ECAB 427 (2008).

⁵ *Id.*; *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁶ *T.H.*, 59 ECAB 388 (2008).

⁷ *Gregory J. Reser*, 57 ECAB 277 (2005); *R.T.*, Docket No. 08-408 (issued December 16, 2008).

medical treatment may, if otherwise unexplained, cast doubt on an employee's statement in determining whether a *prima facie* case has been established.⁸

ANALYSIS

Appellant alleged in her traumatic injury claim that she sustained a left knee injury on December 12, 2009 when she stepped off a neighborhood delivery and collection box unit platform. She provided no other statement regarding this incident. In denying appellant's traumatic injury claim, the Office found that the evidence did not establish that this incident occurred.

The Board finds that there are such inconsistencies in the record as to cast serious doubt upon the validity of appellant's claim. Her account of what transpired on December 12, 2009 conflicts with the histories given to her attending physicians.⁹ In a December 15, 2009 report, Dr. Harrison related that appellant fell at work, rather than stepped off a platform, and he did not list the date of the incident. Dr. Reynolds advised in a December 22, 2009 report that she experienced worsening left pain for over one month and that there was no specific injury. His other reports did not note a history of injury consistent with that provided by appellant in her claim form. Dr. Santee noted that appellant fell when she stepped off a sidewalk and heard a pop but he did not indicate the date of this incident nor did he indicate if the incident occurred while appellant was working. Also, January 8 and February 11, 2010 physical therapy notes identified December 22, 2009 as the date of injury, not December 12, 2009 as indicated on the claim form. The histories in these medical records either do not reference the claimed incident or are not consistent with appellant's statement regarding how the incident occurred or when it occurred. Appellant also did not provide a statement clarifying the inconsistencies with regard to how and when the claimed work incident occurred.

Furthermore, appellant did not file her claim until approximately four months after the purported December 12, 2009 incident or offer an explanation for this delay. As noted, an unexplained late notification of injury is a factor that may cast doubt on an employee's statement regarding how a claimed injury occurred. Although the Office gave her the opportunity on November 9, 2009 to submit additional evidence addressing the deficiencies of her case, it received no response within the time allotted.

Consequently, the Board finds that the factual evidence is insufficient to establish that the claimed December 12, 2009 incident occurred as alleged. As appellant did not meet her burden

⁸ *Betty J. Smith*, 54 ECAB 174 (2002).

⁹ *See, e.g., Luther Jackson, Jr.*, 31 ECAB 800 (1980) (where the Board found that claimed injuries were not established where there were inconsistencies regarding how such injuries occurred); *R.T.*, *supra* note 7.

to establish the occurrence of an employment incident, it is not necessary to consider the medical evidence with regards to causal relationship.¹⁰

CONCLUSION

The Board finds that appellant did not establish that she sustained a traumatic injury in the performance of duty on December 12, 2009.

ORDER

IT IS HEREBY ORDERED THAT the May 17, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 18, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

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

¹⁰ See *Bonnie A. Contreras*, 57 ECAB 364 (2006). The Board notes that appellant submitted new evidence to the Office after issuance of the May 17, 2010 decision. The Board lacks jurisdiction to review evidence for the first time on appeal. 20 C.F.R. § 501.2(c). This, however, does not preclude appellant from having such evidence considered by the Office as part of a formal written request for reconsideration pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. § 10.606.